

S. HRG. 110-335

# INCREASING GOVERNMENT ACCOUNTABILITY AND ENSURING FAIRNESS IN SMALL BUSINESS CON- TRACTING

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## HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS  
AND ENTREPRENEURSHIP

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 18, 2007

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COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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## **INCREASING GOVERNMENT ACCOUNTABILITY AND ENSURING FAIRNESS IN SMALL BUSI- NESS CONTRACTING**

**WEDNESDAY, JULY 18, 2007**

UNITED STATES SENATE,  
COMMITTEE ON SMALL BUSINESS  
AND ENTREPRENEURSHIP,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:08 p.m., in room 428-A, Russell Senate Office Building, the Honorable John F. Kerry (Chairman of the Committee) presiding.

Present: Senators Kerry, Snowe, Dole, and Isakson.

### **OPENING STATEMENT OF THE HONORABLE JOHN F. KERRY, CHAIRMAN, SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP, AND A UNITED STATES SENATOR FROM MASSACHUSETTS**

Chairman KERRY. We are already in order. The hearing will be opened. I apologize for being a little late. A lot of things were running a little late here today, except for Senator Isakson and Senator Dole.

[Laughter.]

Chairman KERRY. I congratulate them.

Good afternoon and welcome. I know Senator Snowe is out in the corridor. She will be in in a moment. We appreciate your attending this hearing today to examine the state of Federal contracting. All of us know that we have made a long and strong commitment here in the Congress to try to maximize small business's ability to access the enormous amount of Federal dollars that are part of our procurement and contracting process. We also want to look at the role that small businesses play and, frankly, look at the Administration's record with respect to giving small businesses a fair opportunity to compete for Federal contracts.

I am disappointed that Administrator Preston is not able to be here today. We consider this a very important topic. We know he is working hard and we certainly respect a lot of the things that he is trying to do, but we would like him to be a part of this dialogue, and while Associate Administrator Hsu is here, I hope he will let him know that we really do hope that we can arrange to have him come up here at some time to sort of put the full imprimatur, if you will, of the Administrator's approval or disapproval on the things that we are trying to achieve, and we think that is important. There will be more hearings on this. I know that he did

promise us in the nominating process to be available and I don't think we have been excessive in our requests, so I hope that we can make that happen.

I am also concerned that Ms. Doan of the GSA pulled out of the hearing at the last minute. I am concerned about that, and I want to have a chance with Senator Snowe to dialogue and see how we might get them to participate in a subsequent follow-up.

As we all know, it is repetitive, I suppose, and to the point of exhaustion that small businesses drive our economy. There are somewhere between 98 to 99 percent of all the firms in the country, half of our GDP and two-thirds of all new American jobs are created by small businesses. So they are very important to the growth of our economy, to the high-paying jobs that workers depend on to be able to meet increasing costs of living, and to take advantage of the better opportunities of the economy which are in those kinds of new jobs, particularly important to the new prospects for women and minorities and for innovative cutting-edge products.

Twenty-three percent of Federal contracting dollars are supposed to go to small businesses. It is not supposed to go as a matter of nice, maybe we will do this. It is a matter of the law. That is what is supposed to be happening. That is required. But the claims that that goal has been met in most people's judgment takes pretty creative math and selective contracting analysis in order to arrive at that conclusion.

According to Eagle Eye publishers, the Federal Government spent more than \$412 billion in 2006. Only 20 percent of that total, under some calculation, went to small businesses. That means that more than \$12 billion that was supposed to could have gone to small businesses that didn't, and \$12 billion is a lot of money to small businesses.

Moreover, small businesses are challenged by a maze of complicated laws, regulations, that many have judged make it difficult for them to be able to succeed in that arena. Those barriers include contract bundling, size standards with loopholes for big businesses, a lack of protections for subcontractors, and a difficult-to-navigate GSA schedule.

When a Federal agency bundles contracts, it limits a small business's ability to bid for the contract. It reduces competition and it leaves the taxpayers to pick up the tab for the increased costs that occur over time, and they do.

Size standards are also a very important issue. As you all know, the size standard is, in most cases, the highest gross income that a business can have and still be considered a small business. There has been no serious update to size standards in years. So we need to update them. We can update them, but we should do it in a way that doesn't harm small businesses. Moreover, reevaluating size standards is critical as agencies promote larger and larger contracts. Small businesses shouldn't be restricted to just subcontracting due to their size, which is increasingly becoming the case as the contract amounts get bigger and they are held to their size and the bundling takes place.

Current regulations allow large businesses to retain small business contracts. In 2005, 6 clearly-identifiable large businesses were counted as among the top 30 small businesses in Federal procure-

ment. How can that work? I know that SBA has implemented a new rule that will give a business a 5-year grace period, but why should we allow big businesses to get small business set-aside contracts for 1 day, let alone for 5 years? I think that we can do better, and I think the Members of this Committee believe we can.

I have heard from a number of small business owners that they have waited many months to get paid after they have completed their subcontracting work for a prime contractor, so the prime contractor winds up squeezing them, and the result is, if you are a small business and you have done a subcontract, it usually puts you in pretty tough straits.

Many small businesses have also partnered with large businesses to bid on projects, so they become part of the empowerment of the large contractor to get the job by being part of the bid as a small business, and then guess what, they never hear from the large business again once the contract has been won. I would like to know where the Administration has been and why that is going on, because it is a form of sham transaction. It is fraud and it is inappropriate.

Last but not least, many small business owners have expressed their frustration that it is tough and expensive to get on the GSA's schedule, not to mention a nightmare to navigate for a small firm with very few resources. They are thrown into a pool with many other businesses, some the largest in the world, and they are told, you are on your own, and that has proven to be very difficult for them.

We made a good attempt last year to legislate on a number of these issues as part of last year's comprehensive small business reauthorization bill led by Senator Snowe, so this is not ground that is being tilled because there has been a change here in the Congress. This is not Democrat or Republican ground; it is small business interest ground, and it is bipartisan in the way in which we need to till it.

So although there were many good provisions in that bill last year, we weren't able to get it through the Senate, so we are prepared to try to rework it, compromise, do the things necessary to address concerns, and I hope we can make that bill move this year.

We are certainly not interested in putting a lot of provisions in that bill that make people unhappy and then have a bill that can't get out of the Senate. We are not interested in wasting the Committee's time or anybody else's. So we hope to do something that is measured and has a chance to succeed. It won't be perfect, but I think it can be a good start and that is why we are here today, to hear from the Administration and from small business. Tell us what is working, what is not, and help us to understand how we can deal with these issues.

Senator Snowe.

**OPENING STATEMENT OF THE HONORABLE OLYMPIA J.  
SNOWE, A UNITED STATES SENATOR FROM MAINE**

Senator SNOWE. Yes, thank you, Mr. Chairman. I certainly appreciate your holding today's hearing on such a vital matter to small business and clearly a contentious issue, one that has been challenging and difficult. It remains one of the single greatest im-

pediments for small business, to access Federal contracts in the Federal agencies. This is a critical hearing and hopefully, as we have in so many of the other issues and the disaster-related bill that is on the floor, we can work on a bipartisan basis to move this forward and to correct many of the deficiencies and barriers to success for small business in accessing to the Federal contracting opportunities that exist government-wide.

I welcome all of our panelists here today, the Administration officials, from the Small Business Administration and the Department of Defense. Most especially, I welcome Patricia Rice, who is testifying today from Bangor, Maine. Patricia is the director of Maine's Procurement Technical Assistance Center, which last year assisted Maine's small businesses to gain more than \$123 million in Government contracts and helped create and sustain more than 2,857 jobs. So Patricia, I am very pleased that you are able to be here today and appreciate all that you have done.

As Ranking Member of this Committee, I am dismayed by the myriad ways that Government agencies have time and again egregiously failed to meet most of their small business statutory goaling requirements. This afternoon, I am looking forward to hearing from the Administration on specific and realistic solutions for finally achieving contracting goals for small business. I am alarmed that only one Federal small business contracting program, the Small and Disadvantaged Business Program, has met its statutory goal and that the three other small business goaling programs have all fallen drastically short.

For example, in fiscal year 2005, women-owned small business only achieved 3.3 percent, failed to meet its 5 percent small business goal, while the Historically Under-Utilized Business Zones, the HUBZone Program, met only 1.9 percent of its 3-percent goal. Most troubling of all, our Nation's service-disabled veteran-owned small businesses received a government-wide paltry total of only 0.6 percent of its 3 percent small business goal. Shockingly, the Department of Defense granted an abysmal 0.49 percent to service-disabled veteran-owned small businesses. This is no way to treat those who have given all for their country and who seek to contribute more through business.

The Federal Government can and must provide more to our country's small businesses. This afternoon, I intend to explore what actions Federal agencies are taking to confront contract bundling, which takes contracting opportunities out of the hands of small business. Other issues I want to probe include subcontracting, inaccurate small business size determinations, flawed reporting data, under-utilization, and the litany goes on and on.

As the Chairman is well aware, these problems are not new and this Committee has held countless hearings on various contracting concerns. Business opportunities through Federal contracts provide vital economic benefits for small business. This is why last year, the Small Business Administration reauthorization bill that the Chairman referred, which to passed out of this Committee unanimously, contained a robust package of small business contracting initiatives.

The President's 2002 nine-point anti-bundling initiative directly addresses the challenges small businesses confront, but unfortu-



nately for our Nation's small businesses, the President's initiative has yet to be followed agency-wide. I would like to ask our panel of Administration witnesses a simple question. Why? Our Government cannot claim to be serious about contracting opportunities for small businesses if the laws are not followed and goaling deficiencies of this magnitude are allowed to continue. Now is the time for actions, not words.

That is why, last month, Chairman Kerry and I requested that the Government Services Administration refrain from terminating its Office Supply Stock Program, at least until the Government Accountability Office conducts a report on the economic impacts that this potential termination will bear on hundreds of small businesses across this country, and so that is why I, too, am extremely disappointed that Lurita Doan, Administrator of the GSA, was unable to testify before the Committee today. I was looking forward to pressing the Administrator on why the GSA continues to take actions, including the bundling of contracts, that are detrimental to small businesses.

And so I specifically wanted to press the GSA on its decision last year not to set aside a \$500 million government-wide acquisition contract task order for HUBZone small businesses. According to SBA and industry estimates, this set-aside would have created over 3,700 jobs in HUBZones across this country and over 350 jobs combined in Oxford, Franklin, Somerset, Piscataquis, Aroostook, and Washington counties in my State of Maine.

And finally, I have been a longstanding champion of small business programs such as the HUBZone program. In my home State of Maine, only 118 of 41,026 small businesses are qualified HUBZone businesses. HUBZones represent a tremendous tool for replacing lost jobs for our Nation's declining manufacturing and industrial sectors. Clearly, this program should be better utilized. And towards that end and earlier this week, I requested with Senator Bond that the GAO investigate how the Federal Government can increase the use of the HUBZone Programs.

Today, I intend to find out again, what can we do to further increase the use of all small business contracting programs, including the HUBZone, the women-owned business, service-disabled veteran-owned small businesses, and, of course, the small business disadvantaged programs. So I look forward to working with you, Chairman Kerry, and Members of the Committee in developing a bipartisan approach to these contracting programs.

I think it is frustrating, frankly, that we have been unable to overcome these major handicaps to small business accessing Federal contracting opportunities when you think of the more than \$300 billion of Federal contracts that are issued every year. For some reason, Federal agencies are totally resistant to including small businesses in those prime opportunities. So hopefully, we can reverse that direction through the course of legislative initiatives and can build upon what we did last year and any other ideas. But clearly, the time has come to address these inequities and deficiencies.

Thank you, Mr. Chairman.

Chairman KERRY. Thank you very much, Senator Snowe, for an important and candid statement. I hope the record will adequately

be reflected to the Administrator that the Chairman was easier on you than the Ranking Member.

[Laughter.]

Chairman KERRY. Senator Dole.

**OPENING STATEMENT OF THE HONORABLE ELIZABETH DOLE,  
A UNITED STATES SENATOR FROM NORTH CAROLINA**

Senator DOLE. Thank you, Mr. Chairman, Ranking Member Snowe, for convening this afternoon's hearing on critical issues of importance facing our small businesses, and thank you to the panelists for sharing your expertise and time with us.

For many folks, starting and growing a business is the means to achieving the American dream. There are many programs in place at the Small Business Administration to assist along the way, such as the special contracting program which affords small businesses owned by socially- and economically-disadvantaged individuals, women, and service-disabled veterans the opportunity to compete for Government contracts.

While all of the groups served by the special contracting program are well represented in my home State of North Carolina, I want to focus today on our service-disabled veterans. Too many of our servicemembers are coming home from service overseas with a disability, and small business ownership is a viable option for many of them, especially when entering the general workforce is not. Federal contracting opportunities for these individuals' businesses should be enhanced.

As Ranking Member Snowe noted in her opening remarks, it is simply unacceptable that in fiscal year 2005, the most recent numbers available, only 0.6 percent of all Federal contracts were awarded to service-disabled veterans. In fact, they were awarded just 0.49 percent of Department of Defense contracts.

When these individuals return to civilian life and take on the responsibilities and challenges of running their own business, they certainly deserve every opportunity to succeed. The Federal goal that at least 3 percent of contracts be awarded to service-disabled veteran-owned small businesses must at least be met and should be exceeded.

In North Carolina, SBA's assistance to small businesses owned by service-disabled veterans is especially important, as our State has a very large military and veteran presence. In fact, more than 125,000 men and women are stationed at our numerous military installations in North Carolina. According to the SBA, there are approximately 1,000 service-disabled veteran-owned businesses in North Carolina. This number will very, very likely continue to increase, given our State's growing military and veteran population and the rigors of the ongoing war against terror. I would expect the same could be said for many other States.

Again, thank you, Mr. Chairman, for holding this important hearing, and I certainly look forward to working with my colleagues and the various agencies represented by the panel to ensure that service-disabled veterans and other special contractors be given fair opportunities to do business with the Government. Thank you.

Chairman KERRY. Thank you very much, Senator Dole, and thank you particularly for that focus on disabled veterans, which is critical, needless to say, and we appreciate it very much.  
 Senator Isakson.

**OPENING STATEMENT OF THE HONORABLE JOHNNY ISAKSON,  
 A UNITED STATES SENATOR FROM GEORGIA**

Senator ISAKSON. Well, thank you very much, Mr. Chairman. I want to at the outset associate myself with your remarks with regards to subcontracting and small business by the larger contractors. The last meeting I had in Atlanta before I left to come here on Monday was with an award-winning travel agency subcontractor who had been a part of a bigger contractor's bid that was procured and the business never materialized. The cost of meeting the compliance of the larger contractor was greater than the revenue from the small business contract. So that is a problem, and Senator Snowe was right on target in terms of the bundling issue and I associate myself completely with both those remarks.

I have read some of the testimony which is going to talk about the importance of transparency of information from the agencies, and that is important, but it is not only the transparency of the information, it is that we need better information.

I have heard horror stories from small businesses who try to use GSA's Federal Procurement Data System Next Generation. Many complain of the system producing a "busy" error any time one goes up to access it during the work day, leaving many small businesses with no choice but to go online on weekends or late at night. In fact, there are even stories of for-profit firms actually doing the search and then selling it to the small business contractors for whom it was originally intended.

My point is, transparency is key, but only if the data is user-friendly, and I think the Government must be user-friendly to those small businesses we seek to provide with portions of these Government contracts. I believe we must make the Next Generation system far more user-friendly in order to benefit small business.

And on that subject, I think GSA must also work to keep its schedule Web site updated. GSA keeps meticulous records on all purchases made through the Federal Supply Schedule because, as I understand, that is the way they collect their fee on each transaction. But you wouldn't know it when you review their online records. I have also heard from constituents in Georgia who complain that there are huge gaps in the posted schedule of contract awards. This, too, is unacceptable because it prevents businesses from conducting basic market research and from finding potential subcontracting opportunities.

As for SBA, I feel it must do a better job in small business community advocacy. Keep in mind I am not saying SBA has to build a new Web site, develop a new program, or hire new personnel, but SBA must simply make better use of its existing resources. I think SBA's Business Opportunity Specialists should do more to ask agencies for set-asides once a reasonable expectation of adequate competition among small businesses has been determined. Small businesses would get an edge on many more contracts if the SBA

did a better job of implementing its advocacy on their behalf. A push to be more proactive instead of reacting could make a huge difference in the number of contracts awarded to small businesses.

So in conclusion, we must address the current challenges facing small businesses trying to win contracts by targeting selected areas and improving on these, making transparency real, and SBA a user-friendly organization. I once again thank the Chairman and Ranking Member for making this valuable hearing available to us today.

Chairman KERRY. Senator, thank you. Thanks for your participation and contribution.

So we will now hear from our first panel. I ask all the witnesses if you would summarize your testimony. Your full testimony will be placed in the record as if read in full. If you could do the summary within 5 minutes, it would help the Committee to focus on questions.

First, we'll hear from Mr. Paul Hsu, the Associate Administrator of the SBA's Office of Government Contracting and Business Development, and then from Mr. Anthony Martoccia, Director of the Office of Small Business Programs in the Department of Defense. Thank you for being here.

**STATEMENT OF PAUL HSU, ASSOCIATE ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC**

Mr. HSU. Chairman Kerry, Ranking Member Snowe, and Members of the Committee, I know Administrator Preston is looking forward to his testimony next week before this Committee. My name is Paul Hsu. I am the Associate Administrator for Government Contracting and Business Development. I appreciate the opportunity to testify today on behalf of Administrator Preston regarding the operation and success of SBA's Government Contracting Program and our continuous effort to ensure greater transparency and accountability throughout the Federal Government process, especially in terms of increasing the opportunity for small businesses.

As a first-generation immigrant myself, in 1984, I started my first high-tech company. After my company won the first contract, we needed working capital, money to buy parts and material. Fortunately, I was able to find the finance I needed with the help of an SBA loan guarantee, and this was how I first came to know the agency. Later, my company was certified to participate in SBA's 8(a) Program. My company is an example of the power of this program to give businesses opportunity to grow.

SBA helped me to develop a successful business. It provided me with the access to capital, training, the development experience and solid competitive opportunities. Simply put, without the agency, I could not have come this far. So it is absolutely an honor and privilege, Mr. Chairman, for me to join an agency that I truly, truly believe in.

Government contracting dollars to the small business have grown significantly since fiscal year 2000. There were \$30.6 billion more in small business prime contracts in fiscal year 2005 than fiscal year 2000, supporting an estimated 235,000 new jobs.

SBA recognized the need for improving our Government Contracting Program and is taking the lead, along with the Office of Federal Procurement Policy, to carry out a number of initiatives, including working with agencies to ensure their reporting is accurate. The integrity of the data reported to the Congress and the public is crucial to instill the confidence in the Federal contracting system. Along with the Administrator of the Office of Federal Procurement Policy, Administrator Preston issued a memorandum to all Federal agencies requiring them to review their procurement data and identify any necessary changes to help resolve the apparent discrepancy in the Federal Procurement Data System, which is as we call it FPDS-NG.

Under Administrator Preston's leadership, SBA has taken a number of steps to make contracting data more transparent and accurate. Just last month, all Federal agencies completed the final review of fiscal year 2006 data in the Federal Procurement Data System. We expect to publish an official Small Business Goaling Report for fiscal year 2006 very shortly and also a reissued fiscal year 2005 report. These reports may not be flawless, but there will be a substantial improvement in the quality of the small business procurement information.

SBA also will publish the first Small Business Procurement Scorecard this month. This scorecard is a method of ensuring the Federal agencies provide the maximum opportunity for small business in the Federal marketplace. It reflects the current performance and the progress in improving such performance. The new scorecard aligned with President Bush's Management Agenda and the data integrity is the key element of it. The scorecard, along with the advances made in the FPDS-NG, are a significant step in adding transparency to the goaling process.

The way to increase competition further is to decrease the practices like contracting bundling and the long-term sole source contracting, which can be done with a strong commitment to procurement planning and changing the way agencies approach the contracting. The Administration, through the SBA Small Business Procurement Scorecard, will encourage agencies to meet all small business goals and give them credit for progress. Each scorecard will be tailored to individual procurement characteristics to the agencies and SBA will work with each agency to establish its milestones and measure it against its own achievement. We have developed a simple, straightforward, and measurable criteria for the government-wide small business procurement scorecard.

Also, SBA is in the process to implement the new size recertification rules. This regulation requires all small businesses to recertify their size status on long-term contracts at the end of the first 5 years and whenever the contract option is exercised. Recertification is also required for short-term contracts when a small business is purchased or merged with another business. This will assure the data is more accurately reflected and further support our effort to help the small businesses receive prime contracts throughout the Federal Government.

Additionally, SBA asked over 1,000 large prime contractors to review any small business contract they may hold in order to more accurately report a small business award to Congress. This is an-

other step to providing more accurate and transparent contracting data that will lead to more opportunities for small business to compete in the Federal marketplace.

SBA is also focused on a number of other initiatives within the Government contracting arena. This includes Administrator Preston's initiative to expand opportunity for small business in the under-served markets, such as women-owned small business, HUBZone certified firms, and service disabled veteran-owned small businesses.

SBA's fiscal year 2008 budget includes a request for \$500,000 to examine how best to serve the 8(a), HUBZone, and SDB communities, as well as the women-owned and service disabled veteran-owned small businesses.

Furthermore, SBA already committed to and is in the process of bringing on-board additional Procurement Center Representatives with a proposal in the fiscal year 2008 budget and requests an additional five PCRs. To better serve small businesses who do business with the Government, SBA redefined rules and responsibilities so the PCRs can devote more time to finding opportunities for small business while the district offices and the resources partner will be devoting more time and on getting small business ready to do business.

Mr. Chairman, this concludes my testimony and I am looking forward to your questions.

[The prepared statement of Mr. Hsu follows:]

**Testimony of  
Paul Hsu  
SBA Associate Administrator for  
Government Contracting & Business Development  
Before the  
Senate Small Business & Entrepreneurship Committee  
July 18, 2007**

Chairman Kerry, Ranking Member Snowe and Members of the Committee, thank you for the opportunity to testify before you regarding SBA's government contracting and business development programs.

I am Paul Hsu, Associate Administrator for Government Contracting and Business Development. I appreciate the opportunity to testify today on behalf of Administrator Preston, regarding the operations and successes of SBA's activities in this arena, and to briefly discuss our continued efforts to ensure greater transparency and accountability throughout the federal procurement process, especially in terms of increasing opportunities for small businesses.

I'd like to take the opportunity to share with you my experience with SBA's contracting and business development programs, and why I personally feel these programs are important to small and small disadvantaged firms.

I was born in Taiwan, and came to the United States in 1976. I obtained a Master's degree in Industrial Management and Systems Engineering from Central Missouri State University and a Ph.D. in Engineering Management from LaSalle University.

In 1984, I started my first company. Little by little, the company grew. After my company won its first contract, we needed working capital, money to buy parts and materials. I was able to find the financing we needed, with the help of an SBA-guaranteed loan. This was how I first came to know the Agency.

Later, my company was certified to participate in SBA's 8(a) Business Development Program. My company is an example of the power of this program to give businesses opportunities to grow, to prosper, and to give back to their communities - that they might never have had otherwise. For example, in the mentor protégé program, my firm's relationship with Boeing presented wonderful opportunities for us to learn, to develop our business, and to extend our reach. Later, it was my privilege to mentor another 8(a) program participant in rural Alabama.

SBA gave me the help I needed to develop a successful business. It provided me with access to capital, to training and developmental experiences, and to solid competitive opportunities. Simply put, without the help of this Agency, I could not have come as far as I have. I am proud that I am the product of SBA, and that I am living proof

that its programs work. For these reasons, I am honored to join an agency that I really believe in.

Government contracting dollars going to small businesses have grown significantly since FY 2000. There were \$30.6 billion more in small business prime contracts in FY 2005 than in FY 2000, supporting an estimated 235,000 jobs.

SBA recognizes the need for improving our Government Contracting programs, and is taking the lead, along with the Office of Management and Budget's Office of Federal Procurement Policy to carry out a number of initiatives, including working with agencies to ensure their reporting is accurate. The integrity of the data reported to Congress and the public is crucial to instill confidence in the Federal contracting system. Along with the Administrator of the Office of Federal Procurement Policy, Administrator Preston issued a memorandum to all federal agencies requiring them to review their procurement data and identify any necessary changes to help resolve apparent discrepancies in the Federal Procurement Data System.

Under Administrator Preston's leadership, SBA has taken a number of steps to make contracting data more transparent and accurate. Just last month, all federal agencies completed final review of FY 2006 data in the Federal Procurement Data System – Next Generation (FPDS-NG). We expect to publish an official small business goaling report for FY 2006 very shortly. We also will re-issue the FY 2005 report, based upon extensive analysis and scrubbing of data over the last twelve months. We believe that these reports may not be flawless. However, they will reflect substantial improvement in the quality of small business procurement information.

SBA will also publish the first Small Business Procurement Scorecard very soon. The scorecard is a method of ensuring that federal agencies provide the maximum possible opportunity for small businesses in the federal marketplace, consistent with statutory contracting goals. It reflects 'current' performance, and 'progress' in improving such performance. The new scorecard aligns with President Bush's Management Agenda, and data integrity is a key element of it. We have not completed our assessment of 'progress' information submitted by agencies. However, we believe that there may be a broad range of agency scores, ranging from 'red' to 'green.'

This scorecard, along with the advances made in FPDS-NG, are significant steps in adding transparency to the goaling process.

The way to increase competition further is to decrease practices like contract bundling and long-term sole-source contracting – which can be done with a strong commitment to procurement planning, and changing the way agencies approach contracting. Agencies have shown that they can change the way they do business, with proper encouragement, as has been demonstrated by the President's Management Agenda scorecard.



The Administration, through SBA's Small Business Procurement Scorecard, will give agencies the encouragement to meet the small business goals and give them credit for progress. The expectation is that it would provide the benefits such as sharing of best practices. Each scorecard will be tailored to the individual procurement characteristics of the agency and SBA will work with each agency to establish its milestones. Each agency will be measured against its own achievements.

We have developed simple, straightforward, and measurable criteria for the government-wide Small Business Procurement Scorecard. FY2006 will be the base year. We have draft scorecards for FY07 but until the FY06 data is available, they will not be made public.

I would like to take just a moment to let the committee know that SBA is in the process of implementing its new size re-certification rules. This new regulation requires small businesses to recertify their size status on long-term contracts at the end of the first five years of a contract and thereafter whenever a contract option is exercised. In addition, recertification is required for short-term contracts, when a small business is purchased by or merged with another business. Doing this will ensure that the data is more accurately reflected and further support our efforts to help small businesses receive more prime contracts throughout the federal government. Additionally, SBA has asked over 1,000 large prime contractors to identify any small business contracts they or their subsidiaries and divisions hold in order to more accurately report small business awards to Congress. This is yet another step in providing more accurate and transparent contracting data that will lead to more opportunities for small businesses to compete in the federal marketplace.

Along with the ensuring more accurate and transparent data, SBA is focused on a number of other initiatives with the Government Contracting and Business Development arena. These include Administrator Preston's initiative of expanding opportunities for small business including underserved markets such as women owned small businesses, HUBZone certified firms, and service disabled veteran owned small businesses.

SBA's FY 2008 Budget includes a request for \$500,000 to examine how best to serve the 8(a), HUBZone, and Small Disadvantaged Business Communities, as well as women owned and service disabled veteran owned small businesses. We recognize the need to improve the effectiveness of these important programs and will use these resources to determine how to best serve these communities. We will be analyzing, among other things, training and use of technology.

Furthermore, SBA has already committed to and is in the process of bringing on board additional Procurement Center Representatives, with a proposal in our FY 2008 budget request to fund 5 additional PCRs. We will be very focused on backfilling any positions that become vacant in a timely fashion as we realize the importance these individuals play.

To better serve small businesses who do business with the government, SBA is redefining roles and responsibilities so that PCRs can devote more time to finding opportunities for small businesses while the district offices and SBA and non-SBA resource partners will be devoting more time to getting small businesses ready to do business.

Chairman Kerry, this concludes my testimony. I look forward to answering any questions you may have.

Chairman KERRY. Thank you very much, Mr. Hsu.  
Mr. Martoccia.

**STATEMENT OF ANTHONY MARTOCCIA, DIRECTOR, OFFICE OF  
SMALL BUSINESS PROGRAMS, U.S. DEPARTMENT OF DE-  
FENSE, ARLINGTON, VIRGINIA**

Mr. MARTOCCIA. Thank you. Good afternoon. Chairman Kerry, Ranking Member Senator Snowe, distinguished Committee Members, it is my pleasure to testify before you today about small business contracting at the Department of Defense. I will read a condensed version of my written testimony submitted for you.

Small businesses have proven time and again to be a wellspring of initiative, ingenuity, and tireless dedication to the mission of the Department. For this and many other reasons, DOD is a loyal supporter of the small business community. My testimony today will focus on contract bundling, small business size standards, subcontracting opportunities, and payments to small businesses.

In the mid-1990s, Congress passed several statutes requiring the Government to buy products and services more efficiently. Federal acquisition professionals became adept at leveraging the immense buying power of the Government to enable prudent stewardship of public funds and fewer internal resources. The consolidation of several requirements into a single contract to save money and gain other benefits is one such methodology. Consolidation and bundling may not be used without first taking into account the effect it may have on small businesses. Even if bundling and consolidation can be justified by its anticipated benefits, contracting professionals must develop acquisition strategies to mitigate the impact on small businesses.

With regard to size standards, the Department is concerned that unrealistically low small business size standards will have a negative impact on the Defense small business supplier base. The Defense Department believes that a number of size standards representing critical defense industries have not kept pace with the U.S. economy. For example, the size and complexity of engineering, professional, and information technology services within the Department have increased dramatically over the last decade.

DOD would favor the adjustment of size standards as needed to keep them in line with the dynamics of the U.S. economy and the U.S. military. My office has met with representatives of SBA and the Office of Federal Procurement Policy in March 2007. All parties agreed that a comprehensive review of the size standards is needed. Last month, the SBA advised that they would proceed with the review, focusing on size standards associated with military systems and engineering services. The Department is optimistic that resolution of the size standards issues will enable small businesses to take on an even greater role in the competitive playing field.

Subcontracting opportunities—military departments and agencies use various techniques to encourage prime contractors to subcontract and team with small businesses. Contractual incentives that reward prime contractors for exceptional subcontract performance is one technique. In addition, we are increasingly using proposed subcontracting performance for small businesses as a source selection factor. When a contractor fails to make a good faith effort

to achieve its subcontracting goals, contracting officials will note this information in the contractor's official past performance record. Past performance information is maintained in the government-wide Past Performance Information Retrieval System.

One subcontractor initiative that we are using in the Defense Department is the Comprehensive Subcontracting Plan, and the purpose of this plan is to determine whether the negotiation and administration of comprehensive small business subcontracting plans on a corporate, division, or plant-wide basis increases subcontracting opportunities for small businesses while reducing the administrative burdens on contractors.

Under the Comprehensive Subcontracting Test Program, eligible contractors establish annual Comprehensive Small Business Subcontracting Plans that cover their entire business operation in support of all DOD contracts and subcontracts. There are currently 14 firms participating in the programs.

And finally, payments to small businesses. It is the Department's policy to assist small business concerns in obtaining payments under their prime contracts, late payments, interest penalties, or information on contractual payment provisions. With regard to prime contractor payments to their small business subcontractors, it is the policy of DOD to ensure that prime contractors establish procedures for the timely payment of amounts due pursuant to the terms of their subcontracts.

Although DOD does not have priority of contracts with subcontractors, a DOD Contracting Officer that determines a prime contractor's certification of payment to be inaccurate in any material respect must investigate the matter. Depending on the contract type, the Contracting Officers will encourage the prime contractors to make timely payments to subcontractors or the Contracting Officer may reduce or suspend progress payments until the contractor applies. Failure of prime contractors to pay their subcontractors in a timely manner is negative past performance and will be recorded in their Past Performance Rating System.

In conclusion, the small business community plays a prominent role in the acquisition of the materials, supplies, and services needed by men and women in uniform. DOD is committed to providing maximum opportunities for small businesses in both the prime and subcontracting areas. They are an integral part of the success of the armed forces, and it is DOD's obligation to afford small businesses every opportunity for contracting.

Today, I have given a brief overview of our four critical issues as they relate to small businesses and I look forward to any questions or comments.

Thank you.

[The prepared statement of Mr. Martoccia follows:]

**Testimony of**

**Anthony R. Martoccia**

**Director, Office of Small Business Programs  
Acquisition, Technology and Logistics  
U.S. Department of Defense**



**Hearing of the  
U.S. Senate Committee on Small Business and Entrepreneurship**

**on**

**"Small Business Contracting"**

**July 18, 2007  
Washington, DC**

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Statement of  
Mr. Anthony R. Martoccia  
Director,  
DoD Office of Small Business Programs  
Before the  
U.S. Senate Committee on Small Business and Entrepreneurship  
July 18, 2007  
Washington, DC

Chairman Kerry, ranking member Senator Snowe, distinguished Committee members, it is my pleasure to testify before you today about small business contracting in the Department of Defense (DoD). Small businesses have proven time and again to be a wellspring of initiative, ingenuity, and tireless dedication to the mission of this Department. For this and many other reasons, DoD is a loyal supporter of the small business community. My testimony today will focus on contract bundling, small business size standards, subcontracting opportunities, and payments to small business.

Contract Bundling

In the mid-1990's, Congress passed several statutes requiring the Government to buy products and services more efficiently. Federal acquisition professionals became adept at leveraging the immense buying power of the Government to enable prudent stewardship of public funds with fewer internal resources. The consolidation of several requirements into a single contract to save money and gain other benefits is one such methodology.

Contract bundling however, is not viewed in the same light as consolidation. Contract bundling occurs when requirements previously suitable for award to small business and provided or performed under separate, smaller contracts are merged into a single procurement, resulting in an acquisition that is unsuitable for award to small business. Due to its negative impact on small business, DoD has long discouraged the practice of contract bundling and any acquisition strategy that contemplates bundling must undergo an extremely rigorous justification and approval process. Only when the Department has determined it will derive a measurable and substantial benefit can this type of acquisition strategy be used.

Bundling may not be used without first taking into account the effect it may have on the small business community. Even if bundling can be justified by its anticipated benefits, contracting professionals must develop acquisition strategies to mitigate the impact on small business. DoD acquisition professionals are obliged to develop

strategies that not only set aggressive small business subcontracting goals but ensure that these goals are achieved.

Training regarding bundling is a significant issue. For the past year, DoD has placed emphasis on educating the acquisition workforce on bundling through conferences, Web casts, and classroom training. The DoD Office of Small Business Programs (OSBP) is in the final stages of revising its Benefit Analysis Guidebook, which provides direction for avoiding or mitigating the impact of bundling, and as well as how to perform a benefit analysis. OSBP is also developing a Teaming/Joint Venture Guidebook and training to assist small businesses in pursuing larger procurements .

I have mentioned the importance of educating the workforce. I would also like to touch on data accuracy. In terms of keeping track of the incidence of bundling within DoD procurement, accurate record keeping is paramount. Recent events have served to focus attention on the challenges faced by DoD and other Federal agencies in obtaining accurate data. Data collection systems such as the Federal Procurement Data System, Next Generation (FPDS-NG), with the capability of reducing calculation time from months to milliseconds, must ultimately rely on the end user for source data. Human error occurs.

In May of 2007 the Under Secretary of Defense for Acquisition, Technology, and Logistics issued a memorandum to the Administrator for Federal Procurement Policy, Office of Management and Budget, affirming the Department's commitment to the establishment of infrastructure and policies and processes to ensure continuous improvement of data quality. DoD has dedicated a significant number of resources to ensure the successful transition into FPDS-NG.

#### Small Business Size Standards

The Department is concerned that unrealistically low small business size standards will or have had a negative impact on the Defense small business supplier base. Although it may be difficult to fathom a multi-million dollar firm as "small", when judged within the context of the industry and the capital investment necessary to start, sustain, and build a business, the concept becomes a reality. The Defense Department believes that a number of size standards representing critical Defense industries have not kept pace with the U.S. economy. For example, the size and complexity of engineering professional and information technology services within DoD have increased dramatically over the last decade. DoD would favor the adjustment of small size standards as needed to keep them in line with the dynamics of the U.S. economy and the U.S. military.

DoD OSBP has met with representatives from the Small Business Administration (SBA) and the Office of Federal Procurement Policy, Office of Management and

Budget in March of 2007. All parties agreed that a comprehensive review of the size standards is needed and, that such a review would be more manageable if it began with a single or very small number of North American Industrial Classification System (NAICS) codes. In June of this year the SBA advised that they would proceed with the review, focusing on size standards associated with military systems and the engineering services. The Department is optimistic that resolution of the size standard issue will enable small businesses to take on an even greater role in the competitive playing field.

#### Small Business Subcontracting Opportunities

The Department of Defense (DoD) offers two markets for small businesses seeking Defense contracting opportunities. The first market is prime contracting; the second market encompasses defense subcontracting, as many of DoD's requirements may be beyond the capacity of a single small business. Defense subcontracting offers tremendous economic opportunity for small businesses.

Military Departments and Agencies use various techniques to encourage prime contractors to subcontract and team with small business concerns. Contractual incentives that reward prime contractors for exceptional subcontract performance is one technique. In addition, we are increasingly using proposed subcontract performance as a source selection factor.

DoD also uses outreach as a means of promoting subcontracting with small business. A particularly useful forum for this has been the Tri-Association Advisory Panel on Small Business (TRIAD). TRIAD is an organization comprised of small business liaison officers from major prime contractors belonging to the Aerospace Industries Association, the National Defense Industrial Association, and the Government Electronics and Information Technology Association. This organization is dedicated to finding new ways to increase subcontracting opportunities for small business. The TRIAD meets three times a year; the Department is regularly invited to speak at these meetings and by doing so is able to focus attention on items of special interest, such as increasing contracting opportunities for small business.

It is the responsibility of both DoD contracting officers and small business specialists to ensure prime contractors' put forth their best efforts to achieve the small business goals established in their subcontracting plans. These goals are intended to challenge prime contractors to provide the maximum practical subcontracting opportunities to all small businesses. Here too, DoD recognizes the need for accurate data reporting and therefore strongly supports the implementation of the Electronic Subcontracting Reporting System on a DoD-wide basis.



Since monitoring subcontracting achievements can be very complex and time-consuming, many Military Departments and DoD Agencies delegate this responsibility, including the administration of individual subcontracts and/or the prime contractor's entire subcontracting program, to the Defense Contract Management Agency (DCMA). Subcontracting is an area of special interest for DCMA. DCMA conducts small business program compliance reviews to assess the effectiveness of prime contractors' overall small business subcontracting program and individual subcontracting plans. DCMA also negotiates individual, divisional, and corporate-wide subcontracting goals with major Defense Contractors, and when delegated, individual plans.

When a contractor fails to make a good faith effort to achieve its subcontracting goals, contracting officials will note this information in the contractor's official past performance record. Past performance information is maintained in the Government-wide Past Performance Information Retrieval System (PPIRS). PPIRS is used by DoD contracting officers to make required contractor responsibility assessments. DoD contracting officers must evaluate the extent of participation of small businesses in all negotiated procurements that are required to have a subcontracting plan.

One subcontracting initiative that is unique to the Defense Department is the Comprehensive Subcontracting Plan Test Program. The purpose of the Comprehensive Subcontracting Plan Test Program is to determine whether the negotiation and administration of comprehensive small business subcontracting plans on a corporate, division, or plant-wide basis increases subcontracting opportunities for small business concerns while reducing administrative burdens on contractors (participating firms are exempt from negotiating individual DOD contract-by-contract subcontracting plans). Under the Comprehensive Subcontracting Test Program, eligible contractors (selected by the Military Departments and Agencies) establish annual comprehensive small business subcontracting plans that cover their entire business operation in support of all DOD contracts and subcontracts. DCMA has the responsibility for the negotiation and administration of these plans. There are currently 14 firms participating in the program.

OSBP contracted with LMI Government Consulting to study the efficacy of the DoD Comprehensive Subcontracting Plan Test Program. The study offered a number of recommendations to improve the program. OSBP is currently reviewing these recommendations to determine which approach has the greatest potential to enhance the program. The publication number for the report is ATL56T1/March 2007.

#### Payments to Small Businesses

The Department's policy is to assist small business concerns in obtaining payments under their [prime] contracts, late payment, interest penalties, or information on

contractual payment provisions. In particular, it is the policy of the Department to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before the normal payment due dates established in the contract. In fact, the regulatory restrictions prohibiting early payment do not apply to small disadvantaged business concerns.

In a Government Accountability Office Report published in May of 2006, it was noted that "DoD's payment process often results in late payments to contractors – which for some small business contractors could lead to financial hardship." The GAO further stated that "The delayed processing of these payment documents is caused, in large part, by the paper-driven nature of DoD's vendor payment process..."

DoD has made great strides to eliminate payment delays by deploying the Wide Area Work Flow – Receipts and Acceptance (WAWF-RA) electronic invoicing system. 54.8% of DoD's invoices are now processed under WAWF and the number of users grows daily. Pursuant with GAO's recommendation, WAWF will soon be updated to include a small business indicator flag to alert DoD payment officials when an invoice is from a small business and to process the invoice as expeditiously as possible.

With regard to prime contractor payments to their small business subcontractors, it is the policy of DoD to ensure that prime contractors establish procedures for the timely payment of amounts due pursuant to the terms of their subcontract(s). Although DoD does not have privity of contract with subcontractors, a DoD contracting officer that determines a prime contractor's certification of payment to be inaccurate in any material respect, must investigate the matter. Depending on the contract type and its nearness to completion, contracting officers will encourage the prime contractor to make timely payments to the subcontractor or, the contracting officer may reduce or suspend progress payments until the contractor complies. Failure of prime contractors to pay their subcontractors in a timely manner is negative past performance information that is reported into PPIRS.

### Conclusion

The small business community plays a prominent role in the acquisition of the materials, supplies, and services needed by men and women in uniform. DoD is committed to providing maximum opportunities for small business in both the prime contracting and subcontracting arenas. They are an integral to the success of our armed forces and it is DoD's obligation to afford small business every practicable contracting opportunity.

Today I have given a brief overview of four critical issues as they relate to small businesses. I look forward to your questions and to any comments you may have that will guide us toward working more effectively with small businesses.

Thank you.

Chairman KERRY. Thank you very much, Mr. Martoccia.

Let me just raise right off the bat the issue that Senator Dole raised about disabled veteran contracting. This is something that the Committee has heard some testimony on previously. Why is the record of DOD so poor with respect to its base constituency, its fundamental constituency? It just seems extraordinary to me, particularly in the time of Iraq and Afghanistan.

Mr. MARTOCCIA. We agree that it is too low and—

Chairman KERRY. Why is it too low? I am asking you, why?

Mr. MARTOCCIA. Well, the trend has a significant increase, but we are changing the way we do business with veterans. We are making it a priority.

Chairman KERRY. Is it safe to say it hasn't been a priority?

Mr. MARTOCCIA. No, it has been a priority, but it is being made more of a priority.

Chairman KERRY. Why are you making it a priority? Are you making it more of a priority?

Mr. MARTOCCIA. That is correct, and we are focusing on getting the decision makers to look at and conduct sources sought to find capable veteran disabled-owned companies that can perform the work.

Chairman KERRY. When you say, to find the capable disabled veteran company, for a lot of veterans who have been disabled, they may not know what they are capable of yet. Don't you think there ought to be a proactive, you can do it, we are going to help you set up, here is the kind of thing you can do, effort?

Mr. MARTOCCIA. Yes. We have representatives from—

Chairman KERRY. If you just go out and look for people who have already started a business, you are not going to find a lot of people, probably.

Mr. MARTOCCIA. Obviously, training, and our PTACs, we have a representative here from Maine who will be talking about it, will help small businesses learn about how to do business with the Government. It is a complicated process and SBA helps in the training. Our small business specialists, we have many resources throughout all departments—

Chairman KERRY. Let me stop you there for a minute.

Mr. MARTOCCIA. OK.

Chairman KERRY. Why does it have to be so complicated? What is inherent about it that makes it so complicated? I mean, this is what drives citizens crazy, is the notion that you do business with the Government and it is complicated. It makes them jump through hoops unlike anything else.

Mr. MARTOCCIA. Obviously, it has to be fair. It has to be competitive. It has to be fully evaluated. So it does take time.

Chairman KERRY. Does that, by definition, have to be complicated?

Mr. MARTOCCIA. Not necessarily, but it does take time. It does take a lot of resources. It takes a lot of effort by the companies who put in proposals to the Government to make sure that they are proper and they address all the issues required in the solicitation.

Chairman KERRY. But everybody else does that in any normal set of subcontracting and contracting process. It seems to me that when a business comes along, if there is work to be done, you can

let it out in the appropriate way. Requests for proposals go out. You review the proposals and you let the business. But somehow, it gets super convoluted according to everybody I talk to.

Mr. MARTOCCIA. Well, I was a Contracting Officer for 30-some-odd years. It does take effort and they have to learn how to put a proposal together to address specific Government requirements, and that is the challenge. They have to have a financial system that can record costs. That is a governmental accounting system that is required to make sure the taxpayers' dollars are spent appropriately. So those are the—

Chairman KERRY. But aren't all of those conditions precedent to being able to actually apply? I mean, don't you say that, don't bother applying if you don't have the following in place, boom, boom, boom, and then they either apply or they don't. I mean, that is a pretty quick elimination process.

Mr. MARTOCCIA. Correct. Again, the resources have been reduced over the last 10 years.

Chairman KERRY. Who reduced the resources?

Mr. MARTOCCIA. The agencies reduced the resources in the 1102 Series. We have fewer contracting professionals to conduct the procurements.

Chairman KERRY. Well, let me ask you about that for a minute, because Senator Snowe and I have certainly been fighting that significantly. I think that as of March 2006, there were only 43 full-time Procurement Center Representatives and a total of 58 total employees with PCR duties. Mr. Hsu, this goes to your testimony also. You said that SBA has requested fiscal year 2008 funding for an additional nine Procurement Center Representatives.

Mr. HSU. Yes, sir.

Chairman KERRY. Senator Snowe and I have pushed for 100, so that is a big difference, a mighty big difference. In 2005, the Inspector General found that SBA didn't have enough Procurement Center Representatives to review bundled contracts, with a survey that SBA had not reviewed 87 percent of bundled contracts. So how are we possibly supposed to hold out the promise to people that the system is going to be fair and accountable and enforced if you are not asking for the right numbers of people to do the job?

Mr. HSU. Well, Mr. Chairman, from an SBA point of view, this is really nothing new to us. Almost a year ago, we realized the Government has not historically met the social-economic Government goals, including HUBZone and especially the service disabled veterans.

The PCRs, we are scheduled to hire five more this year, but my personal—

Chairman KERRY. How do you say five more? You have only requested funding for an additional nine, so are you down from the 43 slots?

Mr. HSU. Oh, no, no, no. We are going to—I think before the end of the fiscal year, we are going to hire five more, and then I think the first part of next year, we are going to hire four more. So the total will be nine.

We are looking at the PCRs very closely, sir. We refocused our PCRs to work primarily with the Federal Procurement Office to help the agency to meet their goal and there are many ways that

we can help the PCRs. The technology is there. We provide the tools, such as Quick Market Search, to help the agencies to conduct a market search very quickly, very easily, and——

Chairman KERRY. Let me just interrupt you for a minute.

Mr. HSU. Yes, sir.

Chairman KERRY. How long have you been over there?

Mr. HSU. A little over 3 months, sir.

Chairman KERRY. And you are talking about things that you are going to do. But we are here to look at what has been done and what you are doing and can do. I mean, I have been through years and years now of sitting at this table listening to people say, well, we are going to do this, we are going to do that, we are going to do this. But it doesn't happen, number one, and number two, the statutory requirements year after year don't get met. Now, tell me how nine additional PCRs are going to review \$300 billion worth of contracts.

Mr. HSU. Well, because we are introducing a lot of high technology, like a quick market search, sir. That information is right there. They don't really have to be physically——

Chairman KERRY. Let me—fill that out for me.

Mr. HSU. OK. The Quick Market Search is a tool that will provide the agencies or contracting officers, if any new requirement is happening, this information is right there, right in front of their screen.

Chairman KERRY. What is? What is right in front of them?

Mr. HSU. It is the information of the contractors, the service disabled veterans. How many of them are in your area? How many of them are in your State? How many of them are in your region?

Chairman KERRY. I am talking about a bundling of a contract, the reviewing of a bundled contract. How are you going to review the bundled contract?

Mr. HSU. Well, we have—in addition to the PCRs, we have our field services people. We have——

Chairman KERRY. Why is it not happening today? Why do 87 percent of the contracts go unreviewed? Eighty-seven percent—that means you are doing about 13 percent. Do you realize the impact of that and the implications of it?

Mr. HSU. We do not like the bundling of contracts at all, sir. We are trying to stop——

Chairman KERRY. I know you don't like it, but how do you stop it——

Mr. HSU [continuing]. Each and every one of them.

Chairman KERRY. If you can't review it and you don't review it——

Mr. HSU. We are working——

Chairman KERRY. [continuing]. And you don't enforce it?

Mr. HSU. We are working very closely with the DOD, which is the primary——

Chairman KERRY. Working very closely——

Mr. HSU. Because we provide the guidance. We provide even the oversight about each and every procurement to prevent any kind of——

Chairman KERRY. What guidance have you provided? Mr. Martoccia, what guidance have you been provided?

Mr. MARTOCCIA. Well, they have provided guidance to us——

Chairman KERRY. To do what?

Mr. MARTOCCIA. Well, you have to remember, sir, that we do have in each of the departments the procurement activity contract specialists that help SBA and the PCRs look at every requirement, especially the large requirements, the consolidated, those contracts that are bundled or have been bundled 20 years ago to see if there are more opportunities available to small businesses. So there are resources and they are being utilized and they are being effective in breaking out some of these large contracts so small businesses can bid on them.

Chairman KERRY. Do you believe that it is adequate to have 87 percent of bundled contracts not reviewed?

Mr. MARTOCCIA. I don't think that is a correct number myself. I mean——

Chairman KERRY. Do you have a correct number to offer the Committee?

Mr. MARTOCCIA. No. I can go by experience, but my experience says——

Chairman KERRY. I am just going by the numbers that the Inspector General found. You disagree with the Inspector General?

Mr. MARTOCCIA. Well, maybe the PCRs have a lower level. But as I said, there are a number of small business resources that every department has that will help SBA look at every requirement for small business opportunities. Now, I don't know what the——

Chairman KERRY. Honestly, I am not trying to be difficult, but I honestly don't know what that means in the context of what I am asking.

Mr. MARTOCCIA. Well, they have expertise in contracting with small——

Chairman KERRY. Where are they applying it? What are they doing?

Mr. MARTOCCIA. They are looking at the procurement requirements. They are looking at the procurement strategies. They are looking at the forecast. They are working with the program offices and the contracting officers to look at large contractors—large contracts that are consolidated, that are task orders——

Chairman KERRY. Why do you think the Inspector General came to the conclusion the Inspector General came to? Is the Inspector General wrong, in your judgment?

Mr. MARTOCCIA. I think he is talking about the PCRs, not our total small business workforce.

Chairman KERRY. The PCR-reviewed bundled contracts?

Mr. MARTOCCIA. Correct.

Chairman KERRY. As opposed to?

Mr. MARTOCCIA. We have, in the Department of Defense, I don't know the exact number, but close to 500 part-time or full-time small business specialists that look——

Chairman KERRY. What percentage of your contracts are reviewed for the bundling, do you think?

Mr. MARTOCCIA. I would hope all of them.

Chairman KERRY. Now, why should we have—I mean, help me to understand why I should have confidence in what you are saying

when, in essence, you claim to have met the goal of small business contracting, correct?

Mr. MARTOCCIA. The latest data is not out.

Chairman KERRY. But previously——

Mr. MARTOCCIA. Right.

Chairman KERRY [continuing]. In the last round of data, you claim to have met it, I believe with a 24.6 percent claim.

Mr. MARTOCCIA. That is correct.

Chairman KERRY. But you don't include any overseas contracting.

Mr. MARTOCCIA. That is not in the base, I don't believe.

Chairman KERRY. It is. You don't include overseas contracting. What percentage is overseas contracting of Pentagon contracts?

Mr. MARTOCCIA. I would have to get back to you with that number. I know it is significant.

Chairman KERRY. I know it is very significant, too. So, in effect, when you include overseas and do the proper math of the money spent by the Federal Government, you are way below 22 percent. You are not at 24 percent, so it is a false claim.

Mr. MARTOCCIA. But I think the statute is based upon the available opportunity for small businesses.

Chairman KERRY. And you are saying there is no available opportunity?

Mr. MARTOCCIA. No, I am not saying that. I am looking——

Chairman KERRY. What is that?

Mr. MARTOCCIA. I am not saying that, sir. I am looking at the base of those contracts eligible to be set aside for small businesses. That is what we base our numbers on, and that is——

Chairman KERRY. Well, I would sure like to look at that, and we will look at that. I would like the Committee staff to take a look at this question of eligibility and see where we come out on that. And I would be very surprised—I am prepared to be, but I would be very surprised if it gets you over the required percentage.

Let me cede to Senator Snowe, if she is ready, and then I will come back to a couple of other things.

Senator SNOWE. Thank you, Mr. Chairman.

If you can sense our frustration, it is only because we seem to confront repeatedly the same problems, the same resistance, and the same inability to get these contracting programs right and administer them on behalf of the small business community. It is truly a challenging problem and it is hard to understand why. The Department of Defense obviously is a major agency when it comes to issuing contracts and the ability for small business to access many of those procurement contracts, and yet you fall far short.

We held a hearing in January of this year on the service disabled veteran-owned small business, and as the Chairman indicated, we are clearly woefully short of the 3 percent goal. These businesses receive 0.6 percent out of a 3 percent statutory goal, and yet the Department of Defense accounts for more than half of all procurement contracts issued by the Federal Government and nearly \$220 billion were spent in contracts in fiscal year 2005, but issued less than all the other agencies government-wide at an egregious 0.4 percent.

So I think the question is why, Mr. Martoccia, as to why the Department of Defense is woefully deficient when it comes to ensuring their service disabled-owned small businesses have the opportunity to have access to these contracting opportunities. I mean, this isn't the first year. It has just been going on year after year.

Mr. MARTOCCIA. I understand. I have been in the job 2 months and I can tell you, as—

Chairman KERRY. Is this—can I just interrupt for a minute? We habitually get people sent up here who have been in a job for 2 months and 3 months.

Mr. MARTOCCIA. Right.

Chairman KERRY. Is this part of the calculation, or—

[Laughter.]

Mr. MARTOCCIA. I was in Paul's job previously, so I am in this job, so I do know the program.

Chairman KERRY. What do they do, ask you all to raise your hand, who has been here the least time?

[Laughter.]

Chairman KERRY. Who has the least answers? We will serve you up tomorrow to the United States Senate.

[Laughter.]

Mr. MARTOCCIA. But you can be assured, Senator Snowe, that the Department and Secretary Gates and my boss are totally committed. I have been there, like I said, a couple of months, and I have never seen such effort that is being made to make the opportunities available to service disabled veteran-owned companies. It is going down from the top to the bottom, and the decision makers understand the need to improve those numbers.

Senator SNOWE. Well, you should have been here for that hearing in January. It is a sad commentary on our Government, and most especially the Defense Department, to hear from these service disabled veterans coming back, struggling to make a transition after serving our country and sacrificing so much and the Government lets them down. We heard tragic stories. I just cannot understand why there is such resistance and intransigence. Obviously, it is bureaucratic resistance and intransigence, and it is just stonewalling this process.

Mr. MARTOCCIA. Well, I don't think it is a lack of effort. I mean, we have had a good trend. We are up, but we are only at 4.9. It is not good enough, and we are going to make every effort to get to those businesses. We are going to do sources sought. The Army alone has come up with \$1.7 billion in the next fiscal year of those requirements that they have already identified that they want to set aside for service disabled veterans. So we are going to do sources sought. We are going to make it a priority.

Senator SNOWE. And how will you do that? I mean, if you think about the amount of defense spending with respect to Iraq, Afghanistan, worldwide, it is obviously astronomical—

Mr. MARTOCCIA. And we have—

Senator SNOWE [continuing]. So it is really hard to comprehend as to why this constituency, the most deserving for providing selfless sacrifice to this Nation and not even being able to participate to help them make this transition. We owe them no less.



Mr. MARTOCCIA. I agree, and we at DOD have a special relationship with the veterans' community and we are doing and we will continue to do all we can do to make those numbers better quicker rather than later.

Senator SNOWE. Well, you are talking about \$220 billion for DOD contracting and \$1 billion for service disabled veterans, \$1 billion out of \$220 billion. That is just really abysmal. It is paltry.

Mr. MARTOCCIA. It is a factor of 6 below what we would like to call the floor of 3 percent.

Chairman KERRY. Could I just interrupt for 1 second? It is not 4.9 percent.

Mr. MARTOCCIA. I mean, .49 percent. I misspoke.

Senator SNOWE. Yes. And so how quickly can we expect a turnaround? More importantly, how quickly can the service disabled veterans expect a turnaround, a different response?

Mr. MARTOCCIA. Very soon. I would think that—I think they are at the right place at the right time to do Government contracting. There is going to be a major effort, and there is currently a major effort ongoing to get those opportunities out and improve the 0.49 of 1 percent so we can get closer to 3 in a shorter amount of time than most people think.

Senator SNOWE. Yes. If you think of \$220 billion and \$1 billion, it really is incredulous to think that we are making such a minimal effort. It really is hard to believe, and those are the 2005 numbers. I hate to think what they are today.

Mr. MARTOCCIA. Again, Senator Snowe, it is not because of lack of effort.

Senator SNOWE. I know. It just is, the question is, it is getting beyond the effort and it is getting it done. It is achieving real results on behalf of this most deserving group of individuals serving our Nation. What does it say about our country if we can't help the Nation's veterans—

Mr. MARTOCCIA. I agree.

Senator SNOWE [continuing]. And those who have been disabled as a result of their service? So I really hope that we can turn this around. Make it your legacy. Make it the Department of Defense's legacy. This problem just didn't develop today, but we are at a very difficult and challenging point in our own country's history with respect to the war in Iraq and the War on Terror in Afghanistan, so we should make a special extraordinary effort to send the right message to those who are serving our Nation that we understand what they have contributed and that we are prepared to do everything we can to move heaven and earth to serve them as they have served our country.

So I hope we can get this right sooner, because really, it requires a major initiative, energy, and the drive to make it happen; and you are in the position to do it.

Mr. Hsu, in all the contracting programs other than the Small Business Disadvantaged Contracting Program, all the other goals of the programs have not been met, as I cited earlier, women-owned business, obviously the service disabled veteran-owned, have not met the goals. HUBZone has never met their goals since the inception of the program. The same is true for women business-owned contracting. That has never been met. It has never been ac-

complished. When can we expect a different record of experience with respect to these programs?

Mr. HSU. Well, Senator, we recognize that. That is the reason why almost a year ago, the agency started the initiative, to me, it is the initiative increasing the opportunities for American small business. We have all the different things that we want to do, and in particular Senator Kerry mentioned about the PCRs.

We are implementing a new tool that is called EPCR. EPCR stands for Electronic Procurement Center Representative. It will provide a very effective and efficient tool for PCRs and the Federal agencies to review all these requirements for set-asides under the procurement program to ensure the opportunity for all small businesses. This year, we will implement the initiative, and so all—

Senator SNOWE. What is the goal of SBA with respect to making sure that these programs meet their statutory requirements?

Mr. HSU. Our goal is going to be 23 percent of small business, 5 percent of women, 3 percent of service disabled—

Senator SNOWE. But by which deadline, though, would this be accomplished? What is the agency setting for a deadline to meet this goal—

Mr. HSU. Well, we want to do it as soon as possible—

Senator SNOWE [continuing]. These goals? What?

Mr. HSU. We want to do it as soon as possible, ma'am.

Senator SNOWE. Yes, but is that going to take a matter of months or the rest of the year? I mean, how long is it going to take? You must have some estimate, because obviously that is the standard of measurement that you would use in order to make sure you have the right program in place to have it accomplished.

Mr. HSU. Well, we anticipate—take the Women-Owned Small Business Federal Contracting Assistance Program, for example. We anticipate the program will be implemented the end of this fiscal year. It is—I have to admit, though, we thought it could be very easy to identify the industries in which the women-owned small businesses are, quote, “under-represented,” but as it turned out, it was more complicated than we expected. And also, for the government-wide set-aside program based on gender, this is very new to us. It is really a new concept, so we want to make sure that all these withstand the constitutional scrutiny.

But again, we are committed to increase the number of contracts made for small business for women, for HUBZone, for service disabled, and—

Senator SNOWE. Yes, but you see, like the women's contracting program has been in place for 6½ years, so how long do you think it will take?

Mr. HSU. Well, ma'am, we did our first study in 2001, which is less than 10 months after the Congress passed the law. But unfortunately, the National Academy of Science did not agree with our study, so that is the reason why in 2006, we contracted with RAND Corporation to do another study, and—

Senator SNOWE. Yes, I know, but we are talking 6½ years. Two-thousand-one—we are in 2007.

Mr. HSU. Yes, ma'am, but the study completed—

Senator SNOWE. What?

Mr. HSU. The study completed. The RAND Corporation did a study and the study completed and we are moving very quickly to publish the final rule, and this, like I said——

Senator SNOWE. Is it going to address the problem?

Mr. HSU. It will, ma'am, if we—yes.

Senator SNOWE. So how long will that process take? What can you tell the Committee? What can we expect——

Mr. HSU. We will——

Senator SNOWE [continuing]. So that we don't have to repeat this process? At least get it implemented for the first time in the history of the program.

Mr. HSU. Yes, ma'am. We will implement the Women-Owned Small Business Federal Contract Assistance Program by the end of this fiscal year.

Senator SNOWE. OK. And so now how about HUBZones?

Mr. HSU. Yes, HUBZones——

Senator SNOWE. That is since 1999.

Mr. HSU. OK. The HUBZone Program is a place-based, race-neutral program. We understand you stimulate the economic development and create jobs in the Historically Under-Utilized Business Zone. We are going to put effort under my watch. This is my program, Senator. This is my program. We will put more effort in marketing to the contracting agencies. We will put PCRs, like I was just mentioning, and also we let all the contracting officers understand there is a "rule of two." In other words, if there are two HUBZone companies that can provide these services, this requirement will be and can be set aside for HUBZone.

We continue the Fed-Biz Op electronic monitoring systems. In other words, we will remind the Contracting Officer that the three percent statutory goal. And most importantly, we will proceed with the HUBZone set-aside letter system. This means an e-mail message will go to the Contracting Officer automatically and formally requesting that the future requirements can be and will be——

Senator SNOWE. When is that system going to be up and running?

Mr. HSU. It will be——

Senator SNOWE. We have been told since 2005——

Mr. HSU. No. I think under my watch, it will be by the end of this fiscal year, ma'am.

Senator SNOWE. The same is true for the HUBZones?

Mr. HSU. Yes, ma'am.

Chairman KERRY. By the end of this fiscal year? In other words, by this October?

Mr. HSU. Uh—yes.

Senator SNOWE. Mr. Martoccia, one other question. I have many, but more one for this round. I sent a letter on March 21 to Peter Gehren, who is the Secretary of the Department of Army, requesting documents, work performed by small businesses, small business contracts at Walter Reed, and I had asked for a response by April 5. Now, when could I expect this report, do you think, since it has been 3 months?

Mr. MARTOCCIA. I don't know the answer to that, Senator——

Senator SNOWE. Well, because I am concerned that some of these contractors could have contributed to the substandard and dis-

graceful work at Walter Reed that we are all familiar with now, and so I wrote a letter back in mid-March.

Mr. MARTOCCIA. I don't think my particular office was involved in it, but I will look into it when I get back.

Senator SNOWE. OK, would you?

Mr. MARTOCCIA. Yes, ma'am.

Senator SNOWE. I would appreciate a response to that.

Mr. MARTOCCIA. OK.

Senator SNOWE. Thank you. Thank you, Mr. Chairman.

Chairman KERRY. Thank you, Senator Snowe.

We have another panel and I don't want to prolong this too long because we need to get the other panel in, but Mr. Martoccia, in answer to Senator Snowe about this question of disabled veteran procurement, you said, and I will quote you, "that it is not because of a lack of effort." I want to respectfully disagree with you, because I think when the military commits itself to something, those within the Pentagon, they usually get it done.

I think it is a lack of effort. I don't think that there has been a real commitment to it. I don't think there has been a real awareness of it. And I am confident that if there had been a sufficient effort, you would be here saying that we have reached out to X-number of places. We have put the following proactive marketing efforts in place. We have reached out to the following numbers of people and here is what we have run up against, and you would define it much more specifically than you have.

So, I mean, I hate to say that, but I really think it has just been off the radar screen, for whatever reasons.

Mr. MARTOCCIA. In all due respect, Senator Kerry, I have been there 2 months and I have never seen in my contracting background the effort and the commitment—

Chairman KERRY. Oh, yes. I understand that—

Mr. MARTOCCIA. No, in the actions—

Chairman KERRY [continuing]. Because this issue got burning in January.

Mr. MARTOCCIA. In the actions—

Chairman KERRY. You have been there for 2 months. It is now July.

Mr. MARTOCCIA. We have—

Chairman KERRY. The fact is that long before you got there, this Committee lit a few burners on the issue on a bipartisan basis, and even before that, there were a lot of questions being raised about it, and particularly with Walter Reed and other things that have happened, there is now an understanding. And I will grant this, I think Secretary Gates is aware of it and it committed to it and I think he is the kind of person who will get the job done ultimately. But I don't think there has been the effort to date.

Mr. MARTOCCIA. Well, going forward, you can be assured—

Chairman KERRY. If there has been, then shame on whoever has been making that effort, because it is inadequate. You know, the Army, as you know, says they never leave any of their wounded behind and the Marines don't leave their dead and the military is famous for committing never to leave anybody behind, but these folks, as we have seen, have been grievously left behind.

Mr. MARTOCCIA. Well, during my stay there, and hopefully it will be until the end of the Administration, I will see to it that it is a priority and there are actions taken and people held accountable to get the job done.

Chairman KERRY. Well, we are going to obviously stay right on this, and I know that Patty Murray and the Veterans Affairs folks are going to be staying on it. I may even raise with the Majority Leader the idea of having some kind of special oversight effort that really keeps the spotlight on this and makes certain that we are all in pursuit of this, so that by the end of the year, there is just no possibility of having overlooked any way of making this happen.

Mr. MARTOCCIA. Well, we have a number of initiatives ongoing that I can't talk about right now that I think you will be pleased with with regard to the veterans—

Chairman KERRY. Helping disabled veterans is top secret?

Mr. MARTOCCIA. No, it is not—

[Laughter.]

Mr. MARTOCCIA. No, it is not. We are going to bring in groups on a regular basis to discuss issues, to get their feedback, to get their advice, small business, disabled business, veterans' businesses, stakeholders—

Chairman KERRY. Well, we will look for all of it. That sounds to me like real effort, and obviously we will welcome it and we look forward to it.

Let me just ask you very quickly, both of you, Mr. Hsu, if you are able to, can you share with us this question of size of businesses? We hear from a lot of small businesses that they repeatedly bump up against the size standards. For example, a certified public accountant has a size standard that is around \$6.5 million, but then you get the four big accounting firms and they are somewhere up around the \$25 billion level in revenue. So how does a small firm compete against that? You can run down the list of different things.

Mr. HSU. Yes, sir. The SBA—

Chairman KERRY. Should the size standards be changed?

Mr. HSU. It will. We—

Chairman KERRY. By the end of this fiscal year?

Mr. HSU. No. This is going to take about 18 to 24 months, and here is why. We have a size standard for every private sector industry in the U.S. economy. We use the NAICS code to identify the industry. So we use either the number of employees or the average annual receipt for the size standard. For example, manufacturing, we use 500 people. In the professional services, we use \$6.5 million.

The size standard, like you said, sir, represents the largest size that a business may be to remain as a small business in the Federal Contracting Program, so we know that is so important. We are, sir, we are conducting a comprehensive study under the Administrator's leadership to reevaluate the size standard for all industries.

Chairman KERRY. Are you doing them one at a time, or—

Mr. HSU. We are doing two to three sectors at a time. So it will take about 3 months for us to complete the two to three sectors, and then the effort will be ongoing. So overall, this is probably

going be about 18 to 24 months' effort. But toward the end, we will complete our comprehensive study for the entire economy——

Chairman KERRY. I may want to pick up on some of these questions with the Administrator when we have him here, and I appreciate your being here certainly. But if you see these lists of items up here, Mr. Martoccia, these are the excluded items and they are excluded both statutorily and by regulation. I think there is a very legitimate question as to whether they are appropriately excluded.

[The list of excluded items referred to follows:]



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## Complete List of Excluded Items, FY 2005

1. **Javits-Wagner-O'Day Program** (JWOD, Sheltered Workshop): Awards/IDVs with the CCR based Sheltered Workshop Flag equal to "Y" are excluded.
2. **UNICOR**: UNICOR or Federal Prison Industries are determined when the award/IDV has a UNICOR designation for the contractor. The exclusion is done by excluding all vendors whose name contains the pattern "FEDERAL PRISON" or "UNICOR" within it.
3. **American Institute in Taiwan**: Awards/IDVs with the American Institute in Taiwan designated as the contractor for the award and determined by a DUNS number of "161174503."
4. **Contracts awarded and performed outside of the United States**: Awards contracted and performed outside of the US are designated when the country in the place of performance is NOT the United States.
5. **Acquisitions by agencies on behalf of foreign governments or entities or international organizations**: Awards in which the contract for foreign entity is yes are excluded from the report.
6. **Product or Service codes for Lease Information - PSC X111 to PSC X300**.
7. **Product or Service code for Utilities - PSC S112**.
8. **Contracts by Tricare DODAAC - H94002**.
9. **Contracts funded predominately with agency generated sources**. Accordingly, the following Federal government agencies are excluded:
  - FDIC, 5100
  - Postal Service, 1800
  - Bureau Of Engraving And Printing, 2041
  - United States Mint, 2044
  - Office Of The Comptroller Of The Currency, 2046
  - -Office Of Thrift Supervision, 2047
  - Transportation Security Administration, 6965; 7013
  - Federal Aviation Administration, 6920
- Tennessee Valley Authority, 6400
- Administrative Office of the US Courts, 1027
- Architect of the Capitol, 0100
- Bankruptcy Courts, 1021
- Central Intelligence Agency, 5600
- Congressional Budget Office, 0800
- Court Services and Offender Supervision Agency, 9594
- Pretrial Services Agency, 959P
- Federal Judicial Center, 1028
- Overseas Private Investment Corporation, 7100
- Supreme Court of US, 1001
- US Courts of Appeals-Judicial Circuits, 1002
- US District and Territorial Courts, 1012
10. **Contracts awarded for DeCA** are excluded because they are buying for a commissary, resale.
11. **Awards/IDVs with a Reason Not Competed value of "RES"** for Resale.

Mr. MARTOCCIA. I agree.

Chairman KERRY. OK. So maybe we can work at seeing whether or not we broaden this base a little more effectively, and we will certainly continue to do that.

In the interest of time, not because we don't have more questions, I am going to leave the record open for 2 weeks so that Committee Members can submit questions in writing. But I do need to move to the next panel in the interest of time. So we are grateful to you for being here today and we look forward to following up and working with you on this issue.

If I could ask the second panel to come right up, we will try to move with a minimum amount of disruption.

Can we stay in order, please? I would like to get folks seated as fast as possible with minimal disruption. Thank you very much.

We have a variety of accomplished witnesses in the second panel today and we are very grateful to you for your patience. First, we are going to hear from Mr. Todd McCracken, president of the National Small Business Association. Then we will hear from Ms. Patricia Rice, the director of the Maine Procurement Technical Assistance Center. Our third witness on this panel is Ms. Magdalah Silva, the chief executive officer of DMS International, Inc., and testifying on behalf of Women Impacting Public Policy. And finally, we will hear from Mr. Ronald Newlan, president and chairman of the HUBZone Contractors National Council.

Thank you again, all of you, for taking time to be here. I know there was a little question mark about how we might meet and so forth. I appreciate your patience, and Ms. Rice, especially. I know you were questioning whether, I think, either to be here or to go home or whatever, but we are glad we could make it work for our neighbors from down East and we are glad to have you here.

So if we could start, Mr. McCracken, please, first. Thanks.

**STATEMENT OF TODD McCRACKEN, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION, WASHINGTON, DC**

Mr. McCRACKEN. Thank you very much for having me. Again, my name is Todd McCracken. I am the president of the National Small Business Association. We are the largest national—excuse me, the oldest national small business organization. I appreciate the opportunity to be here on behalf of all of our members, most especially those that are engaged or trying to be engaged, as it were, in Federal contracting.

You have done, I think, a pretty fine job of outlining what many of the problems are, so with your indulgence, I am going to summarize my statement and not continue to belabor points that have been made and just try to focus—

Chairman KERRY. Can I just interrupt you for 1 minute?

Mr. McCRACKEN. Absolutely.

Chairman KERRY. Is Mr. Martoccia still here? Yes, he is. Good. And Mr. Hsu is here. Thank you, because I want you to be able to hear some of the testimony. Thank you. Mr. McCracken?

Mr. McCRACKEN. Thank you. We believe that we need to increase the small business goal. Twenty-three percent, we think, looked at appropriately, still isn't being met, but even 23 percent is not representative of the role that small business plays in the



economy and we think that it needs to be higher than, in fact, the 23 percent. We also think we need to look at goals by agency and that each agency should be required to meet the minimum Federal goal on an agency-by-agency basis.

We are also in complete agreement with some remarks that have already been made today that the base, as it were, needs to be increased. We specifically think that overseas contracts should be included in the calculation of small business goals, but it doesn't necessarily stop there. There are a lot of items that are excluded and we think it should be looked at very carefully. There are probably some that are appropriately excluded, but not everything, we don't think.

Bundling—clearly, there has been a huge move toward bundled contracts in this arena. Unfortunately, one of the biggest problems is that the Federal definition of bundling isn't sufficient. What we all think of as bundling often doesn't meet the Federal definition for what is bundling to be reviewed in the first place. And so we think that definition needs to be changed to include a much broader range of contracts and not just the narrow definition that currently is in play.

When it comes to fraud and the inclusion—the definition of which small business are getting the contracts, there has been a very serious problem there, obviously, and it has been exacerbated by the trend in recent years of larger companies buying smaller contractors, which has been happening at a much greater pace than it had been in the past. So now you have, as your previous chart showed, very large defense contractors being listed as small business, or their subsidiaries as small business contractors, which clearly is not the case.

In the last month, the SBA has put into place some new regulations which should, we think, help a great deal on this. They may need to go further, we there is, we recognize here, a difficult line because clearly many businesses may grow during the course of a contract and may no longer be small businesses. While we want to make sure that the goals really do help small businesses get contracts, we also don't want to discourage that small business growth at the same time. We don't want them to be counted as small business contracts once they have grown beyond small businesses, but it is important not to disrupt those relationships so the businesses will be able to plan, as well.

Subcontracting is a huge, huge issue for small companies. We talked ad nauseam about prime contracts at these hearings and other fora, but subcontracting is critically important to many, many small companies across the country and there are a whole host of issues there, some of which have been talked about already, the case where a small company may never, in fact, get the business that was promised by a larger business when that larger business gets the prime contract and we think there needs to be some additional accountability there with those larger companies.

Secondarily, there is the question of payment, which has been a perennial issue for small subcontractors. They often are not paid in a timely fashion and we think that there is a very significant potential role for the agencies to hold those prime contractors' feet to the fire a little bit better than it has in the last number of years.

That clearly should be a prime criteria that agencies use in evaluating those companies for the awarding of prime contracts.

I think I will stop there and save time for questions. I see my time is up anyway. Thank you very much.

[The prepared statement of Mr. McCracken follows:]

**TESTIMONY OF  
TODD MCCrackEN  
PRESIDENT  
NATIONAL SMALL BUSINESS ASSOCIATION  
AT A HEARING BEFORE THE  
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP  
U.S. SENATE  
ENTITLED  
“INCREASING GOVERNMENT ACCOUNTABILITY AND ENSURING FAIRNESS IN  
SMALL BUSINESS CONTRACTING”  
JULY 18, 2007**

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Chairman Kerry, Ranking Member Snowe, and members of the committee, my name is Todd McCracken, and I am the president of the National Small Business Association (NSBA), the oldest small-business advocacy organization in the United States. On behalf of NSBA, I would like to thank you for inviting me to testify today on small-business federal contracting.

Federal procurement is not just of singular importance to many small businesses—small-business participation is crucial to a healthy and competitive federal procurement process. Small businesses provide high-quality goods and services to federal-contracting agencies and infuse the federal procurement system with much-needed competition. In turn, the federal government invests in the most-dynamic and innovative sector of the U.S. economy. America’s small businesses annually have generated 60 to 80 percent of the country’s net new jobs over the last decade. Small businesses also “produce 13 to 14 times more patents per employee than their larger counterparts, and... these patents are more likely to be cited in other patenting applications,” according to a recent Small Business Administration Office of Advocacy working paper.

This unrivaled success has been achieved with less than adequate governmental support, however. In FY 2006, for instance, small companies received 19 percent of federal contracting dollars, according to data compiled by the respected research firm Eagle Eye Publishers. Even governmental statistics regarding small-business federal contracting—while more optimistic than those independently compiled—are underwhelming considering the huge and integral role small businesses play in the U.S. economy. The federal research and development numbers are even more disheartening. Despite employing more scientists and engineers than large businesses (32 percent vs. 27 percent) and generating five times more

Todd McCracken  
National Small Business Association

patents per research and development dollar than large companies, America's small businesses receive only 4.3 percent of federal research and development funds.

*Small Business Contracting Goal*

The *Small Business Reauthorization Act of 1997* established a government-wide goal of 23 percent of prime, federal contracts to be awarded to small firms. While this was a welcome initial step, it is time to enhance it. America's small businesses—which comprise 99.7 percent of all employer firms in the U.S., employ half of all private sector employees, and are responsible for more than 50 percent of the country's private, non-farm gross domestic product—deserve their fair share of federal contracting dollars. NSBA supports increasing the government's small-business procurement goal to at least a third of all federal contracts. This does not seem an overly ambitious goal, when one considers that small business comprises half of the U.S. economy. NSBA also supports legislation that would stipulating that each federal agency have an annual small-business procurement goal not lower than the government-wide goal.

Furthermore, NSBA strongly believes that the calculation of agencies small-business contracting numbers should incorporate ALL of an agency's contracts, including those carried out abroad. The inexplicable exclusion of various kinds of contracts, such as those carried out overseas, has distorted the reality of federal small-business procurement for too long. The continued omission of certain types of contracts from the government's small-business procurement calculations too frequently has resulted in escalating exclusions and creative bookkeeping rather than increased small-business contracting or even accurate data collection.

Since 1984, the Competition in Contracting Act (CICA) has prohibited the bundling of contract requirements in a way that unreasonably restrains competition beyond the government's minimum needs. Twenty years ago, in 1987, the Comptroller General issued an advisory ruling in the *Pacific Sky Supply* case which prohibited contract bundling for reasons of administrative, bureaucratic convenience. Unfortunately, federal agencies routinely have ignored this, and the CICA does not set clear standards on the issue. It is therefore not surprising that, according to the White House Acquisition Advisory Panel, about one third of the federal contracts awarded in FY 2004, totaling \$108 billion, were awarded without competition. Congress should consider directing the SBA to issue binding regulations prohibiting anti-

Todd McCracken  
National Small Business Association

competitive bundling in violation of the Competition in Contracting Act. Congress also should direct agencies to set a portion of requirements rolled together under various strategic sourcing initiatives for award to small businesses.

*Reliable and Accurate Data*

The previously-alluded-to discrepancies between the small-business contracting statistics compiled by the government and outside experts demonstrate the absence of reliable and accurate small-business federal procurement data. Time and again, it has been demonstrated that a large number of contracts ostensibly awarded to small businesses actually have been awarded to and carried out by large firms. A FY 2005 Office of Advocacy-sponsored study found that 44 of the top 1,000 small business contractors in FY 2002 were not, in fact, small businesses—and the small-business coded contracts they received totaled \$2 billion. The aforementioned exclusion of various kinds of contracts, such as those carried out abroad, also dilutes the accuracy of federal procurement data. NSBA continues to support efforts to improve the accuracy and reliability of federal procurement data.

NSBA supports the new SBA regulation regarding small-business size-standard recertification following mergers, acquisitions, novation requests, and prior to any option being exercised. Agencies must not receive credit for small-business contracting when none actually has occurred, and contracts purportedly awarded to small businesses actually should be carried out by them.

It is equally vital that these firms not be penalized for their growth. NSBA opposes any effort to change the terms and conditions of contracts awarded to actual small businesses that grew beyond their small-business status during the duration of their contract. Small-business growth should not be penalized, especially if the growth is transitory and related only to the duration of a contract. Small businesses also must not be further saddled with onerous regulatory requirements, as they already disproportionately bear the burden of federal regulations and paperwork. Accordingly, NSBA recommends requiring small-business contractors to recertify their size status every three years, and using a rolling average of their size during this time. This approach will not overly burden small-business contractors with recertification requirements, nor will it unduly punish small-businesses that briefly surpass their size status.

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National Small Business Association

*Elimination of Fraud*

Large businesses are far too frequently the real recipients and executors of federal contracts ostensibly awarded to small businesses. Up to a third of the SBA's list of top 100 small business contractors in 2005 were actually large businesses, according to a report from Eagle Eye Publishers. More than 20 percent of the respondents to an NSBA survey reported losing out on a federal procurement opportunity that instead went to a large firm identified as a small business.

Since 1988, the *Small Business Act* provided for felony convictions up to 10 years, criminal fines of \$500,000, mandatory 3-year debarments, and forfeitures for companies which are determined by the SBA to misrepresent their small business status in seeking government contracts. Prosecutions under these provisions have been lacking, and the SBA rarely rules on whether companies misrepresent their small business status. This should change. To combat fraud, NSBA urges prompt prosecution for companies found to have fraudulently claimed small-business status. NSBA also continues to advocate for increased authority for the SBA to disbar large contractors that fraudulently identified themselves as small businesses.

*Contract Bundling*

Small-business concerns about contract bundling are not new. Unfortunately, they are persistent—as the love affair between federal procurement agents and bundled contracts continues unabated. This dalliance perseveres despite repeated governmental denouncements of its economic unseemliness. No less than the president himself has called for a reduction in contract bundling, saying “I believe the best way to help our small businesses is not only through small-business loans. . . but to unbundle government contracts so people have a chance to be able to bid and receive a contract to help get their business going.” NSBA agrees.

The exceptional growth witnessed in the last 15 years in the size, breadth of work, and number of work locations of prime contracts has been to the detriment of America's small businesses. According to a report sponsored by the Office of Advocacy, by FY 2001, “an average bundled contract was over three times larger than an average contract and over five times larger than an average unbundled contract.”

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National Small Business Association

According to the same report, federal agencies reporting to the U.S. General Services Administration's Federal Procurement Data Center issued a combined 1.24 million prime contracts worth \$1.89 trillion between FY 1992 and FY 2001. The report determined that 8.6 percent of these contracts were bundled and that they accounted for \$840.3 billion, or 44.5 percent, of all reported prime contract dollars during this period. The more frequently contracts are bundled and the larger the average bundled contract becomes, the more small businesses are going to be excluded from competing in the federal procurement system. In fact, nearly a third of the respondents to an NSBA procurement survey reported first-hand experience of losing out on a federal contract because of contract bundling.

The previously-referenced bundling statistics are based on a more broad definition of contract bundling than currently used by the federal government, which relies on a limited definition focused exclusively on whether one of the contracts was previously performed by a small business. This overly-narrow definition warps the government's calculations on the prevalence of contract bundling in the federal procurement arena. NSBA advocates expanding the definition of contract bundling to include any instance where two or more individual contracts are combined.

In order to break-up bundled contracts and ensure agency compliance with existing contracting rules, NSBA supports increased oversight authority for the Office of Management and Budget. NSBA also supports an increased level of authority for the Office of Small and Disadvantaged Business Utilization or the establishment of a similar small-business-focused contracting office within each agency.

#### *Subcontracting*

Federal subcontracting is greatly important to small businesses as well. From FY 1985 to FY 2004, small firms received between 34 and 42 percent of all federal subcontracting, according to a recent working paper produced by the Office of Advocacy. The enactment of a government-wide subcontracting goal would help improve these numbers. NSBA also supports including the entire contract award when calculating the percentage of small-business subcontracts awarded and not just those dollars that are subcontracted.

Todd McCracken  
National Small Business Association

Simply increasing small-business opportunities for federal subcontracting is not sufficient. The federal government must do more to protect small-business subcontractors and to ensure that they are being paid in a timely matter. In fact, 70 percent of the respondents to an NSBA procurement survey expressed the belief that the federal government should provide more oversight and protection for federal subcontractors. This may not be surprising when one considers that nearly a quarter of the respondents said that their small business had been included, as a subcontractor, in a multi-year contract for which the prime contractor has yet to provide any work or payment—and in almost 70 percent of the contracts in question work had commenced over 12 months ago.

Additionally, almost 30 percent of the respondents reported personally experiencing “extreme delays” for subcontracting services they had provided. Accordingly, NSBA continues to advocate for the codification of payment history in the federal evaluation of all prime federal contractors. NSBA also supports proposal to grant prime contractors bonus credits for their next bids upon for achieving their subcontracting goals.

#### *Conclusion*

As the members of this committee well know, small business is the engine of the U.S. economy. America’s small businesses lead the nation in net new job creation and innovation. Small businesses also can infuse the federal procurement system with much-needed competition—but only if they allowed to compete on an even slightly-level playing field. Achieving such a playing field will benefit both the small-business community and the country.



Chairman KERRY. Thank you very much.  
Ms. Rice from Bangor?

**STATEMENT OF PATRICIA RICE, DIRECTOR, MAINE PROCUREMENT TECHNICAL ASSISTANCE CENTER, BANGOR, MAINE**

Ms. RICE. From Bangor, yes. Mr. Chairman, Senator Snowe, thank you for your support for the Nation's small businesses. I am honored to be here. As was mentioned, I am the director of the Maine Procurement Technical Assistance Center, often referred to as the Maine PTAC. The Maine PTAC is part of the Procurement Technical Assistance Program that has 93 centers nationwide, funded through the Defense Logistics Agency.

The Government funding provided by the program allows the Maine PTAC to offer what I consider the most important service, and that is one-on-one counseling with the professionals knowledgeable in Government contracting. This personalized counseling benefits the business because they can find reliable and timely answers to their Government contracting questions. But our center also offers a bid match service, information on past procurements, contracting workshops and training on Government contracting, matchmaker events held in conjunction with other New England PTAC Programs.

At this time, I would like to talk about some of the challenges that have already been mentioned before. Top among them would be contract bundling. I would like to give a Maine example.

After pursuing Government contracts for more than a year and then getting some small contracts, a Maine machine shop was awarded a 5-year multi-million-dollar contract to make precision parts for the U.S. Army Tank Automotive and Armaments Command. That is TACOM. The small business ramped up, hired people, filled orders, and then about 18 months later, the machine parts that he was supplying to TACOM were wrapped into a large bundled contract that ultimately went to a large prime contractor. The company was unable to recover many of the costs of ramping up and now is not actively looking for Government contracts.

Contract bundling is promoted as making the contract process more streamlined and providing cost savings to the Government. However, nearly always, it impacts small business, resulting in diminishing opportunities for a small business in Government contracting. And if it is happening in Maine, it is happening in other States.

Another pesky problem is the International Traffic and Arms Regulations, ITAR. It presents a burden that is particularly hard because of the registration and the high fee associated with the—imposed upon by the Directorate of Defense Trade Controls. In separate cases, two small Maine businesses who supply a small part or component to a prime contractor found out that the small part is for a weapons system. The businesses received a letter informing them of the DDTC registration requirement and the \$1,750 annual fee in order to come into compliance. One such company was a woman-owned small business of four people supplying a \$49 component.

The HUBZone Program, although it is not a hurdle and I believe that the HUBZone Program has been a benefit to small businesses,

there are some areas that I see in need of improvement. I see there are a lot of small businesses that could be considered located in an economically-depressed area of Maine, but are not eligible for HUBZone certification because of how the HUBZones are defined. Some economically-depressed, sparsely-populated sectors get overlooked by the program because they get counted in with larger surrounding areas that are more affluent or doing well.

So in conclusion, while I think small businesses face hurdles in Government contracts, I don't think the process is broken, only strained. The Maine PTAC works with businesses every day to provide them with the tools that they need to benefit from the Government opportunities, and nationally, the figures for the PTAC Program are impressive. Nationwide, the PTAC program has assisted 55,000 clients, generated over \$14 billion in Government contracts, and creating or retaining over 300,000 jobs. So although the PTAC Program is small, it does work.

I greatly appreciate the Committee leadership in assisting small and medium-sized businesses and its focus today on Government contracting. I thank you also for your support of the PTAC Program and for the honor and opportunity to testify today.

[The prepared statement of Ms. Rice follows:]

Testimony of  
Patricia A. Rice  
Director, Maine Procurement Technical Assistance Center  
Senate Small Business and Entrepreneurship Committee  
“Increasing Government Accountability and Ensuring Fairness in Small Business Contracting.” July 18, 2007

Mr. Chairman, Senator Snowe, members of the Committee, I am honored to come before this distinguished Committee and participate in today’s hearing. I want to thank you for your long-standing leadership and efforts in support of our nation’s small businesses.

My name is Patricia Rice. I am the Director of the Maine Procurement Technical Assistance Center, often referred to as the Maine PTAC. The Maine PTAC is part of the Procurement Technical Assistance Program that has 93 centers nationwide funded and administered through the Defense Logistics Agency.

The government funding provided for the program allows the Maine PTAC to offer what I consider to be our most valuable service which is one-on –one counseling by professionals knowledgeable in government procurement. This personalized counseling benefits the business because they can find reliable and timely answers to their government contracting questions.

Our center also offers:

- a bid match;
- Information on past procurements;
- Contracting workshops and training; and
- Matchmaker events held in conjunction with other PTAC programs in New England

At this time, I wish to respectfully bring to the Committee’s attention a few challenges that small businesses face in government contracting.

**Contract Bundling:** I appreciate all the previous work of the Committee regarding contract bundling and I will add to that a Maine example. After pursuing government contracts for more than a year and then getting some small contracts; a Maine machine shop was awarded a 5 year multi-million dollar contract to make precision parts for the U. S. Army Tank Automotive and Armaments Command (TACOM). The small business ramped up, hired people, filled orders and then about 18 months later, the machine parts that he was supplying to TACOM were wrapped into a large bundled contract that ultimately went to a very large prime contractor. The company was unable to recover many of the costs of ramping up and is now not actively looking at the government market to sell his precision parts.

Contract bundling is promoted as making the contracting process more streamlined and providing cost savings to the government. However, it nearly, always results in

diminishing the opportunities of small business in government contracting. And if it is happening in Maine, it is happening in all states.

**ITAR-** The International Traffic in Arms Regulations (ITAR) presents a burden that is particularly hard because of the registration requirements and the fee imposed by the Directorate of Defense Trade Controls (DDTC). In separate cases, two small Maine businesses who supply a small part or component to a prime contractor found out that the small part is for a weapons system. The businesses received a letter informing them of the DDTC registration requirement and the \$1,750.00 annual fee in order to come into compliance. One such company was a woman owned business of 4 people supplying a \$49 component.

**HUBZone program:** While I believe the HUBZone program has been a benefit for small businesses, there are some areas that may need improvement. I have seen that a number of small businesses that could be considered located in an economically depressed area of Maine are not eligible to become HUBZone certified because of how HUBZones are defined. Some economically depressed, sparsely populated sectors get overlooked by the program because they get counted with large surrounding areas as part of the statutory formula and thus, through averaging, disqualify those rural sectors from the program. Such is the case in Penobscot County where the high employment and wages of the Bangor area lopsidedly influences the HUBZone formula to give the impression that all areas of the County are doing well.

In conclusion, while small businesses face hurdles in government contracting, I do not feel the process is broken, only strained. The federal government spends over \$350 billion per year procuring goods and services, thus offering opportunities for small businesses.

The Maine PTAC works with small businesses every day to provide them the tools they need to benefit from these opportunities. Last year that translated into over \$123 million in government contracts to Maine PTAC clients.

Nationwide the figures are very impressive; PTAC programs assisted 55,000 clients -- generating over \$14 billion in government contracts and creating or retaining over 300,000 jobs. Although the PTAP program is small, it does work!

I greatly appreciate this Committee leadership in assisting small and medium sized businesses and its focus today on government contracting. Thank you, also for your support of the Procurement Technical Assistance Program and for the honor and opportunity to testify before you.

Chairman KERRY. Thank you so much for taking time to come down here and be with us. We appreciate it.

Ms. Silva.

**STATEMENT OF MAGDALAH SILVA, CHIEF EXECUTIVE OFFICER, DMS INTERNATIONAL, INC., SILVER SPRING, MARYLAND, ON BEHALF OF WOMEN IMPACTING PUBLIC POLICY**

Ms. SILVA. Chairman Kerry, Ranking Member Snowe, thank you for the opportunity to be here today. I applaud your passion and commitment to the development of small business. My name is Magdalah Silva, president and chief executive officer of DMS International, a management and technology consulting firm located in Silver Spring, Maryland. DMS is a woman-owned company established in 1994 and has been providing information assurance, software development, statistical reporting, as well as instructor and Web-based training to both the defense and civilian agencies. Our primary Federal customers include the Department of Defense, Army, Navy, and Air Force, as well as the U.S. Department of State and the Department of Housing and Urban Development. Thank you for inviting me to testify today.

My testimony today is on behalf of Women Impacting Public Policy. Women Impacting Public Policy is a bipartisan, nonprofit organization that represents well over half-a-million women in businesses nationwide and 46 small business associations. The title of this hearing adequately reflects our overall concerns on Federal contracting, "Ensuring Fairness in Small Business Contracting."

As Senator Snowe observed, the Government failed to meet its goals for contracting with women-owned businesses. In fiscal year 2005, only 3.3 percent of Federal contracts were awarded to women-owned businesses. That represents billions of dollars left on the table and hundreds of qualified companies without opportunity.

Furthermore, WIPP members believe that the small business contracting goals should be increased. We strongly agree with the H.R. 1873 passed by the House, which raises the overall small business goal from 23 percent to 30 percent and raises the women-owned goal from 5 percent to 8 percent.

We have said for a long time that since WIPP's existence, that Pub.L. 106-554, the law authorizing the Women-Owned Small Business Federal Contract Assistance Program, must be implemented in order to meet the 5-percent goal for women-owned businesses passed by Congress. For 7 long years, women have waited for the SBA to implement this program. It is our understanding that the proposed regulations are in the process of being formulated and we ask Congress to continue to press SBA for those proposed regulations.

Contract bundling continues to pose a real threat to small business contracting. Despite the President's initiative in 2002 which clearly stated that unbundling of contracts was a priority of the Administration, we see the trend in Government contracting toward larger bundled contracts. The Office of Management and Budget reported that for every \$100 awarded on a bundled contract, there is a \$33 decrease to small businesses.

Despite strong evidence that bundling is not good for small business or for the Government, for that matter, a 2004 GAO report

shows that Federal agencies remain confused about what actually constitutes contract bundling, which results in poor accountability and disparity in reporting. We urge the Committee to clear up the confusion for the agencies by putting into place concise language to define what triggers a bundling review.

As Federal contracts get larger, subcontracting integrity becomes more important. With regard to subcontracting, we continue to believe that if you list us, use us. The Committee language last year required that prime contractors utilize the small businesses included in their subcontracting plan unless the small businesses could no longer meet the requirements. It also included penalties for violating the subcontracting plans.

Prompt payment from the prime contractors to the subcontractors also continues to be an issue for small business. Currently, the Government does not have the authority to intervene because its relationship is with the prime contractor, not with the subcontractor. Nevertheless, we continue to hear stories from our members that this is an ongoing problem. WIPP recommends that the Government withhold further payments to prime contractors who are not paying their subcontractors in a timely manner.

Another issue for small businesses is the current size standards administered by the Small Business Administration. WIPP members tell us that as the Government contracts get larger, the small business size standards must be adjusted to reflect that trend. In some cases, the size standard limit restricts an award to very small companies instead of small companies. This inhibits the ability of our small businesses to compete in the Federal market and has the counter-effect of ensuring that women- and minority-owned companies, in effect, stay small.

One example which is particularly in my case is the size standard for IT services. One commonly used code by the agency for administrative IT services is capped at \$6.5 million. According to our members who have IT companies, this is simply too low. The effect of having a size standard too low is that very small firms will be selected and will require a major integrator behind them to successfully execute the contract. If the size standard is higher, a small business will be able to successfully perform at least 100 percent of the work and ultimately grow their business.

While we are not advocating a wholesale reworking of the size standards, we are suggesting that for the problematic ones, SBA should be willing to review them. This is critical not just for the Federal Government procurement, but also because States and cities look to the SBA size standards on which to base their own programs.

Thank you for this opportunity to speak on behalf of a number of important issues to WIPP members and many small businesses. We look forward to working with the Committee on changes to contracting laws and regulations to ensure continued small business growth in the Federal sector. I will be happy to answer any questions that you may have. Thank you.

[The prepared statement of Ms. Silva follows:]



**Statement of Magdalah Silva on Behalf of  
Women Impacting Public Policy and Coalition Partners:**

National Women Business Owners  
Corporation (NWBOC)  
WIPP Florida  
Women Construction Owners and  
Executives (WCOE)  
Kansas City Council of Women  
Business Owners

Boardroom Bound  
National Association of Small  
Disadvantaged Businesses (NASDB)  
National Association of Female  
Executives (NAFE)  
Center for Women's Business Research

**Before The  
Senate Small Business and Entrepreneurship Committee**

**"Increasing Government Accountability and Ensuring  
Fairness in Small Business Contracting"**

**July 18, 2007**

Chairman Kerry, Ranking Member Snowe and Members of the Committee, I am Magdalah Silva, President and CEO of DMS International, Inc. a Management and Technology consulting firm located in Silver Spring, Maryland. DMS is a woman-owned company established in 1994 that has been providing information assurance, software development, statistical reporting as well as providing instructor and web-based training to both defense and civilian agencies. Our primary federal customers include the Department of Defense, Army, Navy and Air Force, as well as The U.S. Department of State and the Department of Housing and Urban Development. Thank you for inviting me to testify today.

My testimony today is on behalf of Women Impacting Public Policy. Women Impacting Public Policy (WIPP), a bipartisan nonprofit organization, represents well over half a million of women in business nationwide and 46 small business associations.

The title of this hearing so adequately reflects our overall concerns on federal contracting—ensuring fairness in small business contracting. Although the FY 2006 contracting numbers by the SBA have not yet been released, the statistics for FY 2005 showed that the small business goal of 23% was exceeded—25.4%—but the government failed to meet its goal for women-owned businesses. In FY05, only 3.3 percent of federal contracts were awarded to women-owned businesses. That represents billions of dollars, according to an annual report prepared by the House Small Business Committee majority staff.

We have said for as long as WIPP has been in existence that P.L. 106-554, the law authorizing the Women-Owned Small Business Federal Contract Assistance Program, must be implemented in order to meet the five percent goal for women-owned businesses passed by Congress. This is a critical tool to helping women-owned businesses grow and diversify into the federal marketplace. For seven long years, women have waited for the SBA to implement this program. For seven long years the SBA has studied and restudied this issue. We have waited long enough.

Some of our members have been able to obtain 8(a) status as a way of becoming more competitive in the federal marketplace. WIPP notes that the 8(a) income thresholds have not been updated since 1989. That presents a real problem for the program—the thresholds are so low in 2007 dollars that the program is really set up to fail. If a business owner does not have assets on which to draw, the business is less likely to succeed.

Furthermore, WIPP members believe that the contracting goal of five percent should be increased. We strongly agree with the H.R. 1873, the Small Business Fairness in Contracting Act, passed by the House, which raises the overall small business goal from 23 percent to 30 percent and raises the women owned goal from 5 percent to 8 percent. In addition, we support inclusion of overseas contracts in the small business goals also included in H.R. 1873.

We look to Congress to reverse the trend toward contract bundling that still occurs despite the President's initiative in 2002 which clearly stated that unbundling of contracts was a priority of this Administration. When the President launched the initiative in 2002, the Office of Management and Budget (OMB) reported that for every \$100 awarded on a bundled contract, there is a \$33 decrease to small businesses. They went on to say, that because these types of contracts "run longer and encompass a greater scope, competition is reduced in terms of frequency and the number of opportunities" for small business. Despite strong evidence that bundling is not good for small business or



the government, a 2004 Government Accountability Office (GAO) Report No. 04-454 “Impact of Strategy to Mitigate Effect of Contract Bundling on Small Business Is Uncertain”, shows that federal agencies are confused over what constitutes “contract bundling” which results in poor accountability and disparity in reporting. While 928 bundled contracts were captured in the Federal Procurement Data System (FPDS), only 24 of those contracts were reported by agencies to the GAO. We urge the Committee to clear up the confusion for the agencies and continue its efforts to unbundle contracts. Additionally, WIPP believes construction services should also be included in the contract bundling definition, if the value of the construction contract is more than \$65 million.

According to WIPP’s 2007 Annual Issues Survey, one-half of the federal contractors who responded were primes contractors and one-half were subcontractors – so subcontracting is very important to our membership and all small business. As federal contracts get larger, subcontracting integrity becomes more important.

With regard to subcontracting, we continue to believe that “if you list us use us” is an important principle. We were heartened by the language (Section 1102) included in last year’s version of the Senate SBA Reauthorization bill that addressed this issue and urge the Committee to include it in this year’s version. Small businesses spend thousands of dollars in staff resources to be a part of the subcontracting plan on a prime contractor’s bid. Our membership tells us that all too often the prime, after winning the contract, takes their portion of the work “inside” or simply reverts to using the same old subcontractors they have used in other bids. The Committee language last year required the prime contractor to utilize the small businesses it included in its subcontracting plan unless the small business could no longer meet the requirements. It also included penalties for violating the subcontracting plans.

Prompt payment from the prime contractors to the subcontractors continues to be an issue for small businesses. The Prompt Payment Act addresses only the relationship between the prime contractor and the agency. The agency is required to pay its prime contractors with 30 days. Our members tell us that some agencies pay more quickly than other agencies. The larger problem and one that the law does not address is prompt payment from a prime contractor to a subcontractor. Currently, the government does not have the authority to intervene because its relationship is with the prime contractor, not the subcontractor. The relationship between a prime and a subcontractor is considered to be a commercial relationship with its own set of terms. Nevertheless, we continue to hear stories from our members that this is an ongoing problem. It seems to us that the government should withhold further payments to prime contractors who are not paying their subcontractors in a timely manner. This would require a change in the law.

Another issue for small businesses is the current size standards administered by the SBA. WIPP members tell us that as government contracts get larger, the small business size standards must be adjusted to reflect that trend. In some cases, the size standard limit restricts an award to very small companies instead of small companies. This inhibits the ability of our small businesses to compete in the federal market, and has the effect of ensuring that women and minority owned companies remain small.

In the construction industry, for example, the current size standards force a business out of the program before that company can compete on equal footing. So, the company ultimately fails; then, someone else starts a brand new company to fill the void – and the process starts all over again.

While we are not advocating a wholesale reworking of the size standards, we are suggesting that for those problematic ones, such as architecture, construction, and administrative services, to name a few, SBA should be willing to review them. This is critical not just for the federal government procurement, but also because states and cities look to the SBA size standards on which to base their own programs. This means that the unintended consequences mentioned above continue to be propagated across the whole country, ultimately hurting the very businesses the program was intended to help.

A potential problem is the recertification rule, 13 CFR Parts 121 and 124, that recently was published by the SBA and which went into effect June 30, 2007. The rule, entitled, "Size for Purposes of Government-Wide Acquisition Contracts, Multiple Award Schedule Contracts and other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Businesses; Business Status Determinations," addresses size recertification to ensure that companies being awarded small business contracts are in fact small businesses and to ensure accurate reporting by federal agencies. While WIPP supports the underlying reasoning behind requiring recertification of small companies, WIPP will be carefully monitoring the implementation of the rule to ensure that there are not unintended consequences to small businesses and their ability to grow.

Thank you for this opportunity to speak on a number of issues important to WIPP's members and all small businesses. We look forward to working with the Committee on changes to contracting laws and regulations to ensure continued small business growth in the federal sector.

Chairman KERRY. Thank you very much, Ms. Silva.  
Mr. Newlan.

**STATEMENT OF RONALD NEWLAN, PRESIDENT AND CHAIRMAN, HUBZONE CONTRACTORS NATIONAL COUNCIL, ROCKVILLE, MARYLAND**

Mr. NEWLAN. Chairman Kerry, Ranking Member Snowe, distinguished Members of the Committee, thank you for inviting me here today. For those I have not met, I am Ron Newlan, chairman of the HUBZone Contractors National Council. Our council is the only national trade association that focuses exclusively on expanding the implementation of the Federal HUBZone contracting program.

A HUBZone is an area of our Nation that has high unemployment or low household income. Today, 37 million Americans live in poverty. There is a strong correlation between the locations of our HUBZones and the locations where these 37 million impoverished Americans live.

This program was designed to create jobs where America needs jobs the most. The program creates these jobs by offering competitively-awarded Federal contract opportunities to small businesses that locate in a HUBZone and hire employees who live in these HUBZones.

Awarding Federal procurements to HUBZone firms is good public policy for several reasons. First, awards under the program are almost always based on competition, so the Government receives the advantages of competitive pricing.

Second, each HUBZone firm must have its largest office in a HUBZone. This stimulates the economic development of these zones of poverty.

Third, at least 35 percent of each HUBZone firm's employees must live in a HUBZone. In many instances, these employees, before being hired by a HUBZone firm, were drawing unemployment and/or welfare, so it is a double win as we move the unemployed or the welfare recipient back to the roles of a productive tax-paying employee.

The HUBZone Program was very well designed and I thank all of the Members of this Committee who were here 10 years ago, particularly former Chairman Senator Bond for his sponsorship and leadership in creating the program.

Today, there are 13,000 HUBZone firms. Their collective annual revenues exceed \$25 billion. If they were collectively ranked, they would be ranked number 90 on the Fortune 500 list, larger than General Dynamics or Coca-Cola. Our resources as a community are vast. In Massachusetts, there are 110 HUBZone firms and their annual revenues exceed \$370 million. In Maine, we have 118 HUBZone firms whose collective annual revenues are approximately \$410 million.

Unfortunately, this well-designed program has been very poorly implemented by the Federal agencies that buy America's goods and services. The HUBZone statute sets forth a goal for HUBZone contracting at three percent of total Federal contracting dollars. Despite the large size of our HUBZone contractor community, the Federal Government has never come close to meeting this level. In fiscal year 2005, the Government achieved 1.94 percent, and this

was by far the best year ever. If I could just repeat your opening statement, Chairman Kerry, it is not about being nice. It is a matter of it is the law, the 3 percent goal and all the other goals in the Small Business Act.

If I had to attribute the program's lack of success to one thing, I would attribute it to the procurement community's reluctance to change their methods of doing business. For every 1 HUBZone set-aside competition conducted in 2005, there were 78 small business set-aside competitions conducted. Yet the statutes and regulations are clear that the HUBZone Program is a higher priority program than the small business set-aside program.

Now to make matters even worse, the House of Representatives has passed a bill, H.R. 1873, and sent it to the Senate. One aspect of this bill is to increase the contracting goals for small disadvantaged business and women-owned business to 8 percent annually. The House completely ignored increasing the HUBZone goal to 8 percent. If H.R. 1873 was to become law, this would increase the emphasis on the SDB and the women-contracting program at the expense of the HUBZone Program.

It is time for the Federal procurement community to follow the law. For the past 10 years, far too many procurement officials have ignored the HUBZone statute. For 37 million Americans who live below the poverty level, the time for action has arrived.

I ask this Committee to, one, convey to all senior officials and Federal procurement officials that the HUBZone rule of two means what it says. When there are two or more qualified HUBZone firms, make the procurement a HUBZone set-aside.

Two, reemphasize that the HUBZone Program has priority over the small business set-aside program. There should never again be 78 small business set-asides for every 1 HUBZone set-aside.

Three, ensure the SBA headquarters HUBZone Program regains its budget line item status and appropriate no less than \$15 million annually so this hard-working SBA staff can create the tools required to ensure the Federal departments give the program the emphasis that it deserves. For every dollar spent on this SBA budget line item, the return to the taxpayers is many-fold in reduced welfare payments, reduced unemployment payments, and increased income taxes.

Four, increase the oversight of any department that fails to meet the HUBZone minimum level set by Congress.

And five, increase all small business goals to 8 percent or do not increase any of them. The HUBZone Program goal cannot be ignored.

In closing, I would like to salute the departments and agencies who have proven that achieving HUBZone contracting goals is possible when senior leaders commit to the task and their procurement communities focus on goal accomplishment. The Departments of Agriculture and Interior each achieved 9 percent. The Department of Army achieved their 3 percent goal. HUD achieved 4 percent, and GSA achieved 4 percent.

Thank you for the opportunity to bring these urgent matters to your attention. I would like to just add that I have brought some color-coded maps of each State represented on this Committee, so if the staff would like to pick them up, there are packets here. I

will leave them in these orange folders. But color-coded maps of where the HUBZones are in every one of your States. Thank you.

[The prepared statement of Mr. Newlan follows with attachments:]

**Testimony of Ronald Newlan, Chairman HUBZone Contractors National Council**

**US Senate Committee on Small Business and Entrepreneurship**

**Hearing on**

**Increasing Government Accountability and Ensuring Fairness in Small Business Contracting**

**Wednesday July 18, 2007**

Chairman Kerry, Ranking Member Snowe, distinguished members of the Committee, thank you for inviting me here today. For those I have not met, I am Ron Newlan, the Chairman of the HUBZone Contractors National Council (HCNC). Our Council is the only national trade association that focuses exclusively on expanding the implementation of the Federal HUBZone contracting program.

I am honored to be here today to present to you our Council's views on the current status of the HUBZone Program.

A HUBZone is an area of our nation that has high unemployment or low household income or both. Today, 37 million Americans live in poverty. There is a strong correlation between the locations of America's HUBZones and the locations where these 37 million impoverished Americans live.

This Program was designed to create good jobs where America needs jobs the most. The Program creates these jobs by offering competitively awarded Federal contract opportunities to small businesses that locate in a HUBZone and hire employees who live in these HUBZones. Awarding Federal procurements to HUBZone firms is good public policy for several reasons. Firstly, awards under the Program are almost always based on competition so the Government receives the advantages of competitive pricing. Secondly, each HUBZone firm must have its largest office in a HUBZone—this stimulates the economic development in these zones of poverty. Thirdly, at least 35% of each HUBZone firm's employees must live in a HUBZone. In many instances, these employees, before being hired by a HUBZone firm, were drawing unemployment and/or welfare...so this is a double win—we move the unemployed or the welfare recipient back to the rolls of productive tax-paying employees.

The HUBZone Program was very well designed and I thank all of the members of this Committee who were here ten years ago—particularly former Chairman, Senator Bond, for his sponsorship and leadership in the process of creating the Program.

Today, there are nearly 13,000 HUBZone firms—their collective annual revenues exceed \$ 25 billion. If they were collectively ranked, they would be ranked #90 on the Fortune 500 list—larger than General Dynamics or Coca-Cola! Our resources, as a community, are vast. In Massachusetts, there are +110 HUBZone firms and their annual revenues exceed \$370 million.

In Maine we have 118 HUBZone firms whose collective annual revenues are approximately \$410 million. In Missouri, we now have 206 HUBZone certified firms!

Within the federal contracting small business sector, we are a large and robust small business community--there are more HUBZone certified firms than there are small disadvantaged businesses, 8(a) firms, or service disabled veteran-owned firms.

Unfortunately, this well designed Program has been very poorly implemented by the Federal Agencies that buy America's goods and services.

The HUBZone statute sets a goal for HUBZone contracting at 3% of total Federal contracting dollars. Despite the large size of our HUBZone contractor community, the Federal Government has never come close to meeting this 3% level. In FY 2005, the Government achieved 1.94%--this was by far the best year ever.

If I had to attribute the Program's lack of success to one thing, I would attribute it to the procurement community's reluctance to change their methods of doing business. For every one HUBZone set-aside competition conducted in FY 2005, there were 78 small business set-aside competitions conducted. Yet, the statutes and regulations are clear--the HUBZone Program is a higher priority program than the small business set-aside program.

The HUBZone statute and current regulations require a contract to be set-aside for HUBZone competition when a contracting officer has a reasonable expectation of receiving two or more offers from HUBZone firms and if the award can be made at a reasonable price. This is referred to as the HUBZone Rule of 2. It is very disappointing to see how often the procurement community ignores this Rule of 2 and conducts tens of thousands of procurements each year outside of the HUBZone set-aside program that should be awarded using HUBZone set-aside procedures. If current regulations were followed by the Federal contracting community, more than a hundred thousand jobs could be created annually for America's poorest residents!

Now to make matters even worse, the House of Representatives has passed a bill, HR 1873, and sent it to the Senate. One aspect of this bill is to increase the contracting goals for small disadvantaged businesses and women-owned businesses to 8% annually. The House completely ignored increasing the HUBZone goal to 8%. If this was to become law, this would increase the emphasis on SDB and women-owned contracting at the expense of the HUBZone Program.

It is time for the Federal procurement community to follow the law. For the past 10 years far too many procurement officials have ignored the HUBZone statute. For the 37 million Americans who live below the poverty level, the time for action has arrived.

I ask this Committee to:

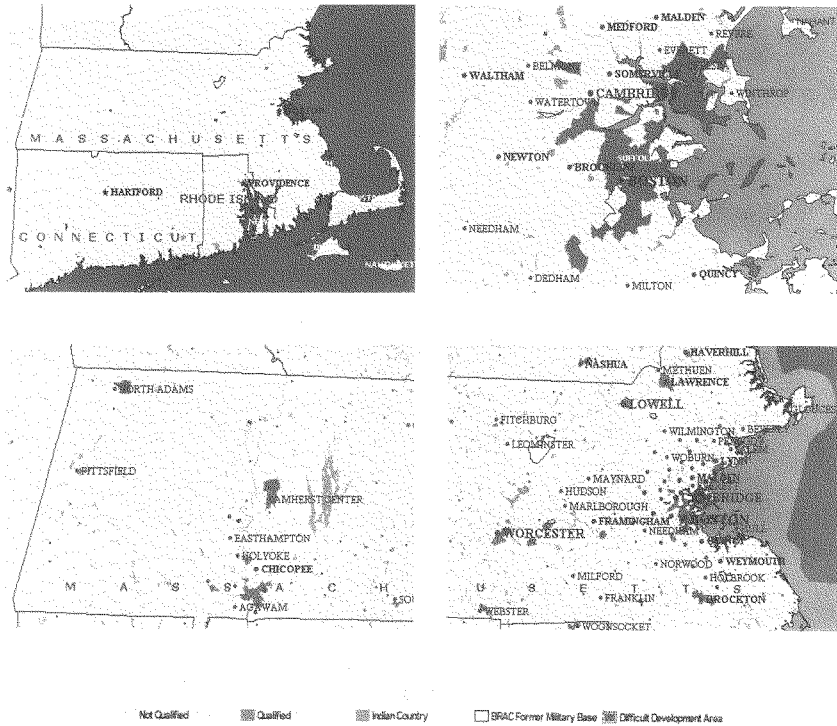
1. Convey to all Senior Officials and Federal procurement officials that the HUBZone Rule of 2 means what it says--when there are 2 or more qualified HUBZone firms...make the procurement a HUBZone set-aside!
2. Re-emphasize that the HUBZone Program has priority over the small business set-aside program--there should never again be 78 small business set-asides for every 1 HUBZone set-aside competition.

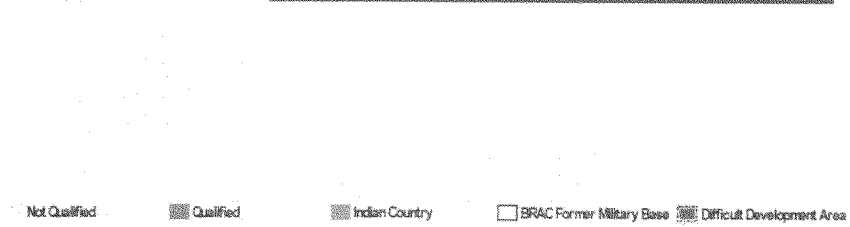
3. Ensure the SBA Headquarters HUBZone Program regains its budget line item status and appropriate no less than \$15 million annually so this hardworking SBA staff can create the tools required to ensure that the Federal Departments give the Program the emphasis that it deserves—for every dollar spent on this SBA budget line item the return to the taxpayers is many fold in reduced welfare payments, reduced unemployment payments, and increased income taxes paid.
4. Increase the oversight of any Department that fails to meet the HUBZone minimum level set by the Congress.
5. Increase all small business program goals to 8%--or do not increase any of them--the HUBZone Program goal should not be ignored.

In closing, I would like to salute those Departments and Agencies who have proven that achieving HUBZone contracting goals is possible when senior leaders commit to the task and their procurement communities focus on goal accomplishment. The Departments of Agriculture and Interior each achieved 9 % in FY 2005. The Department of the Army achieved their 3% goal. HUD achieved 6% and the GSA achieved 4%.

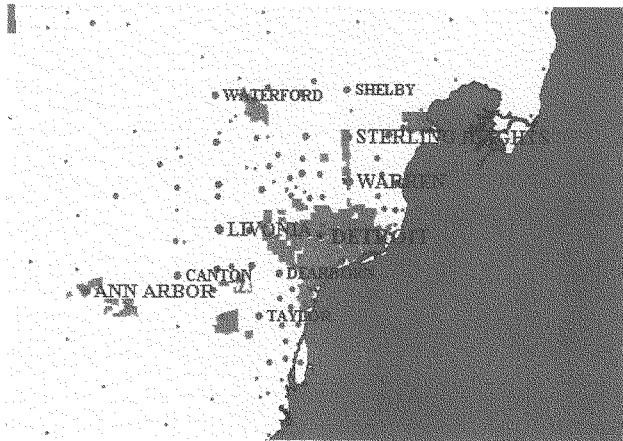
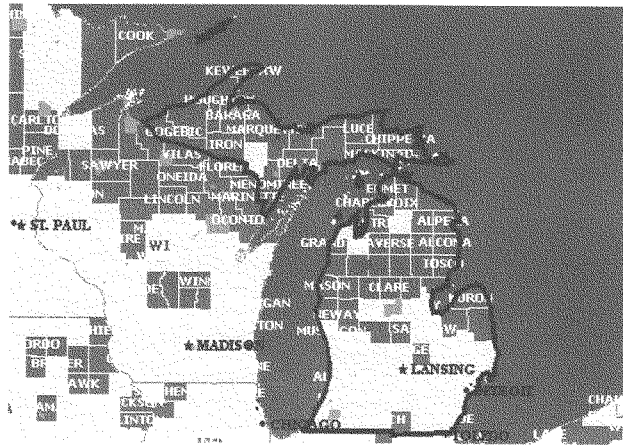
Thank you for the opportunity to bring these urgent matters to your attention.



MASSACHUSETTS

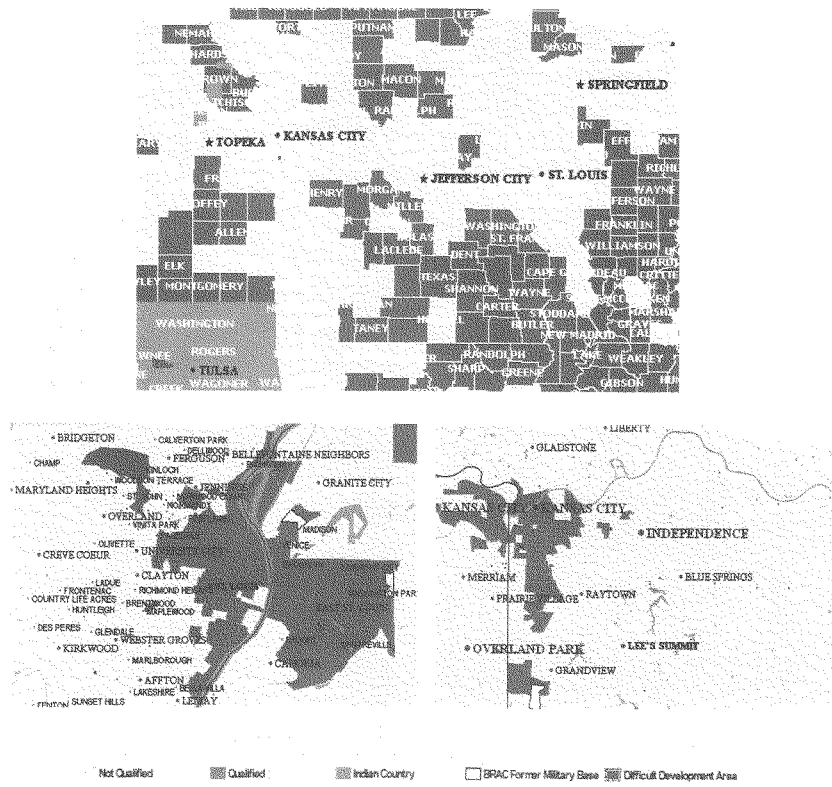


## MICHIGAN

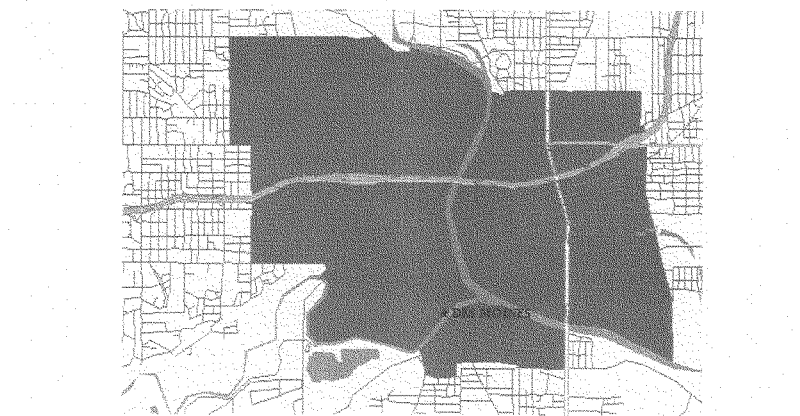
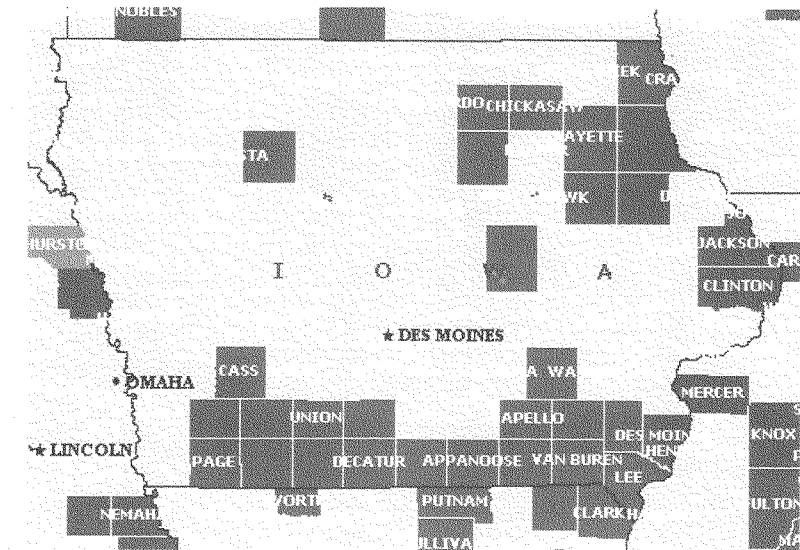


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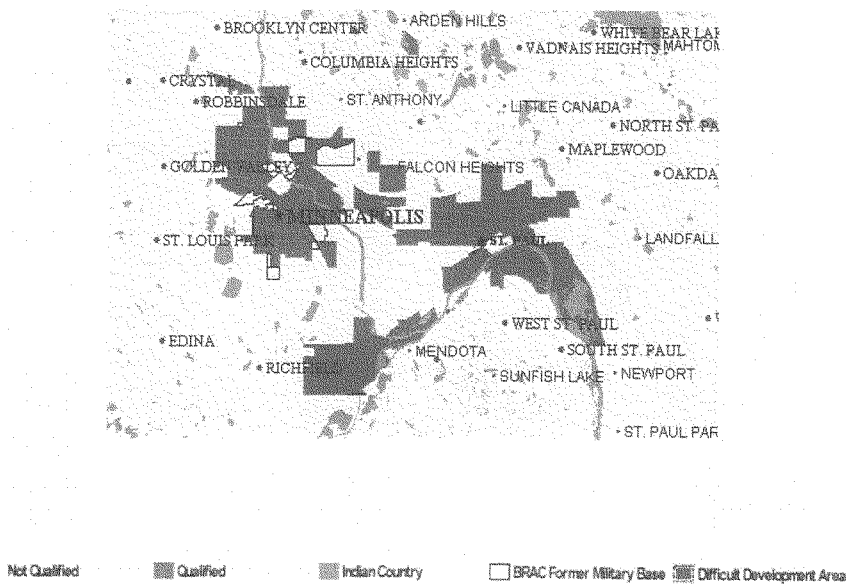
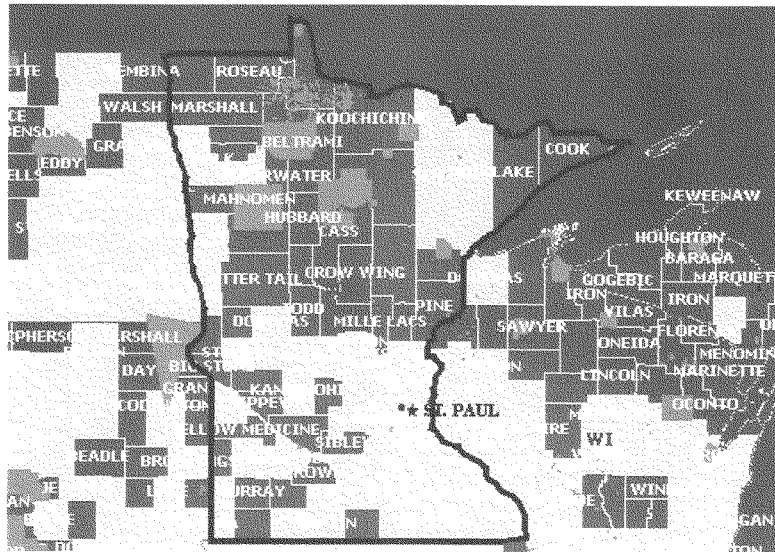


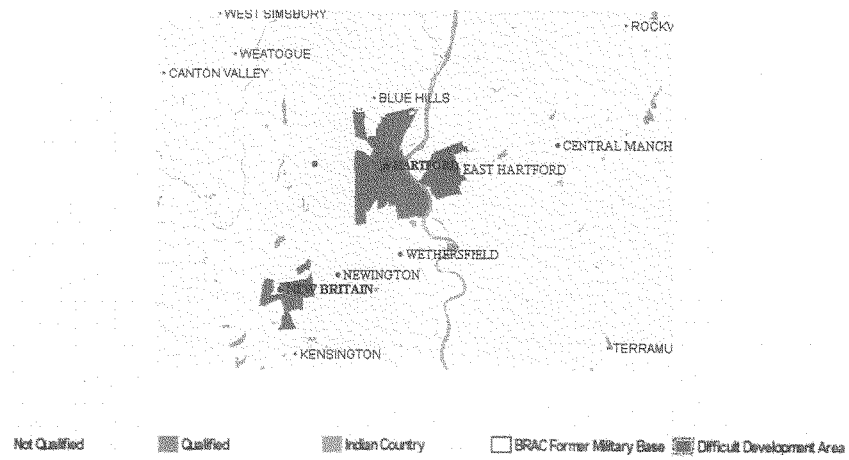
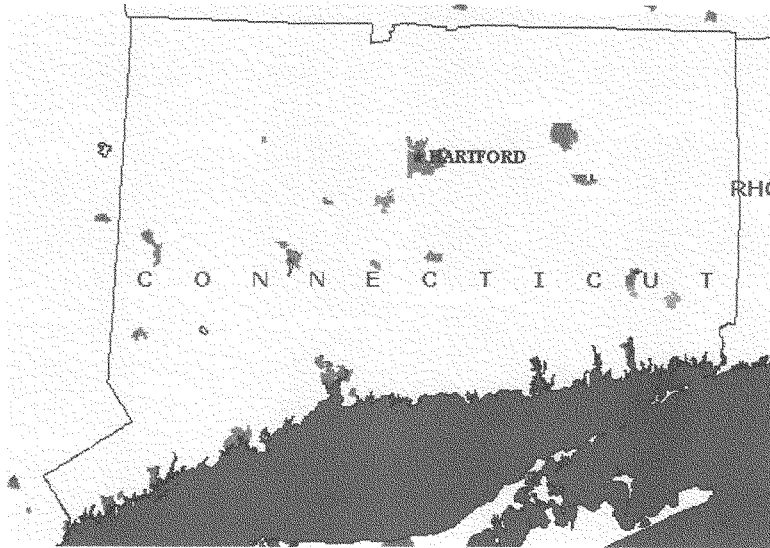
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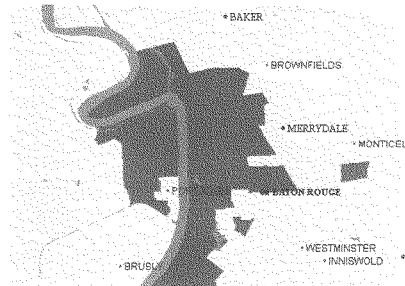
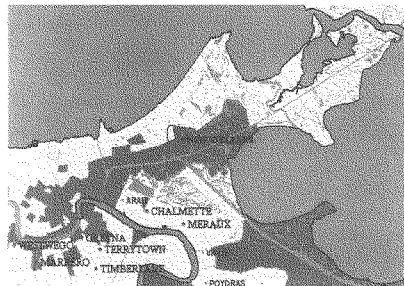
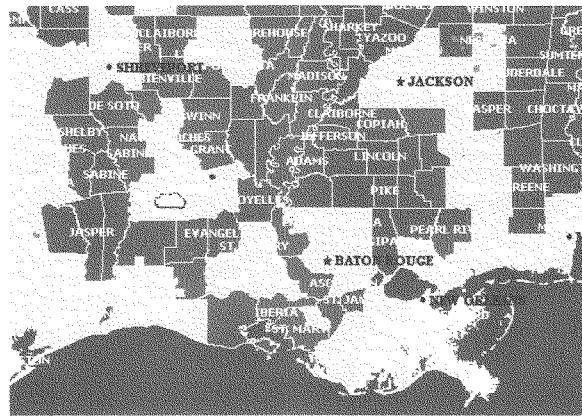
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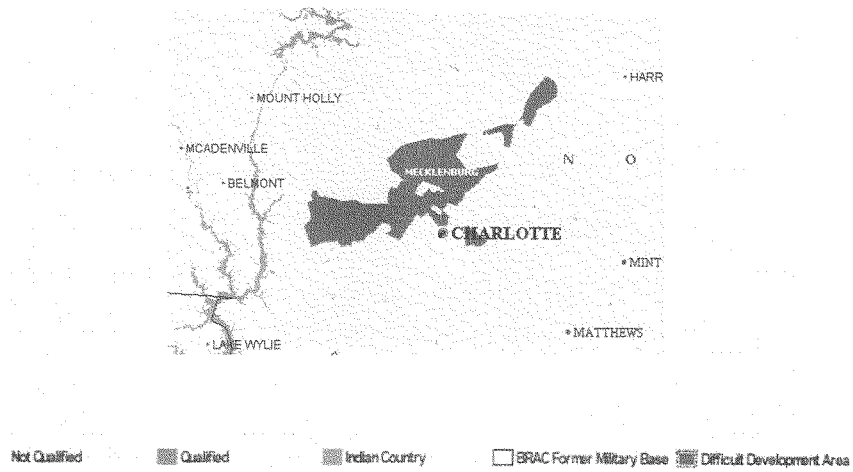
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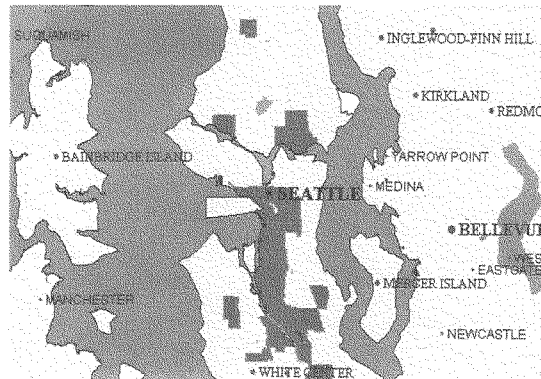
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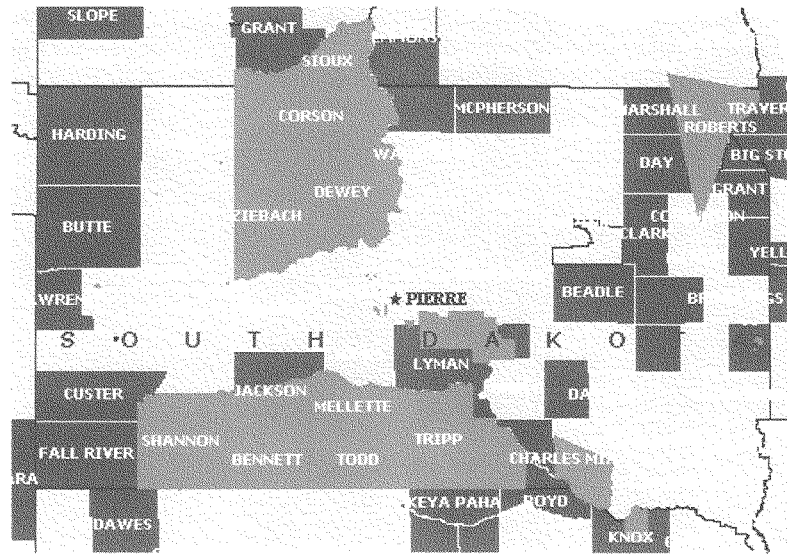


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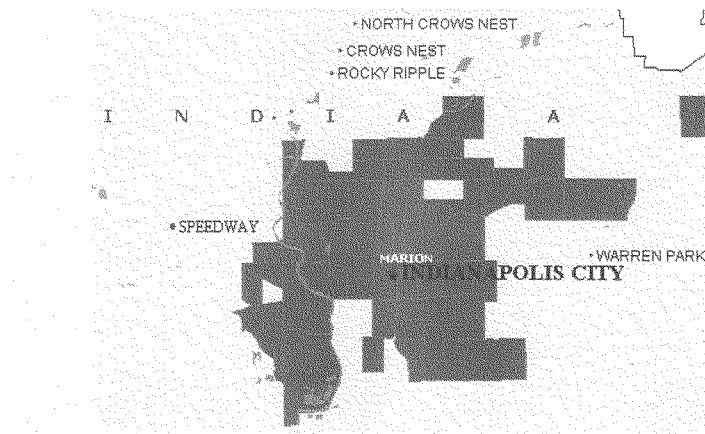
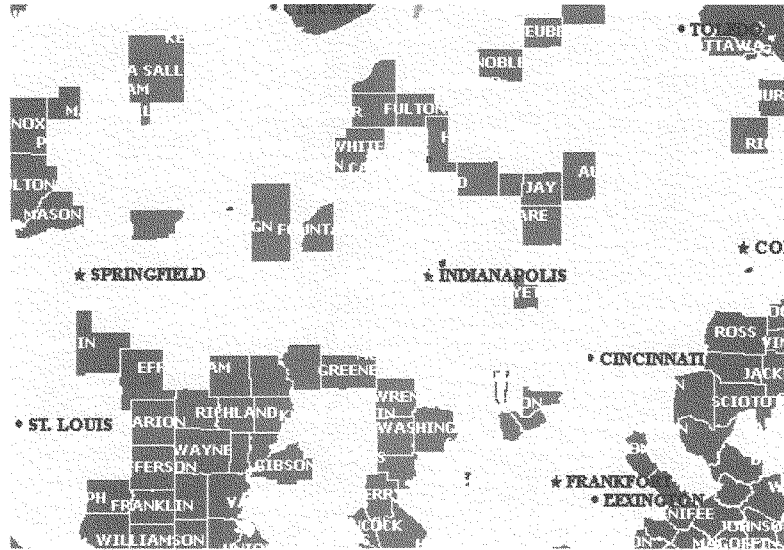
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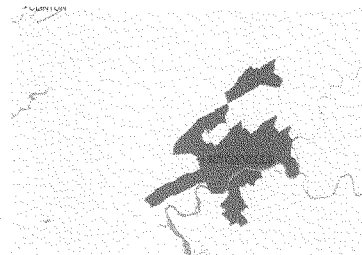
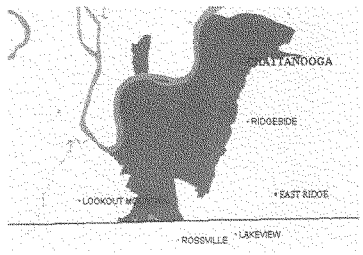
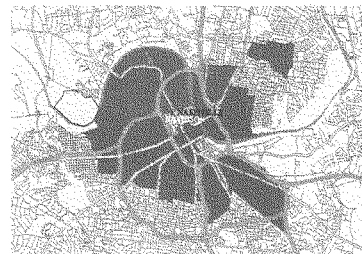
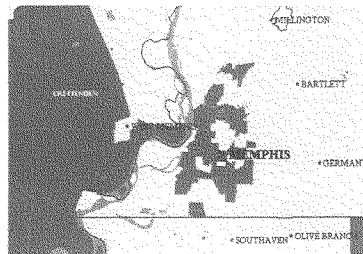
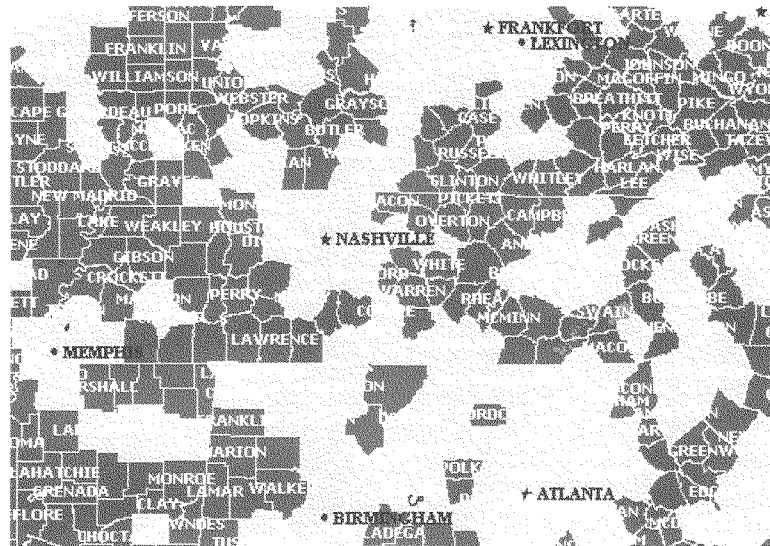
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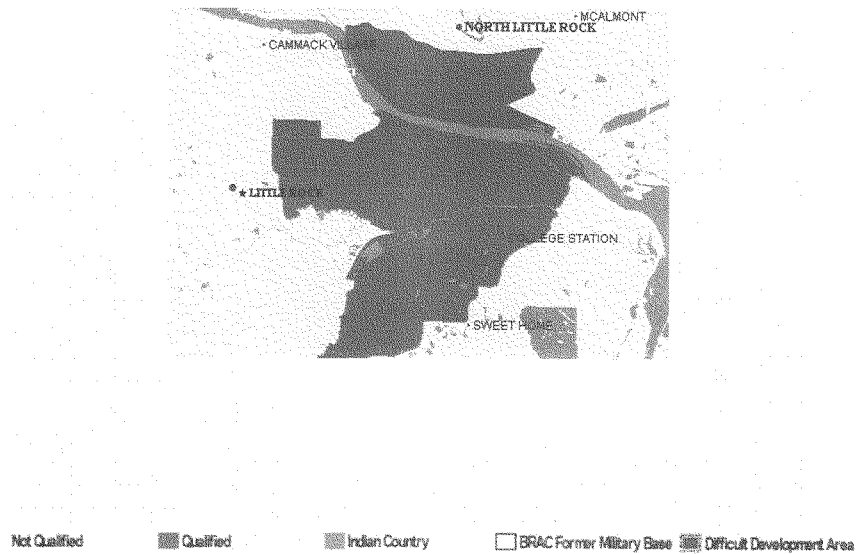
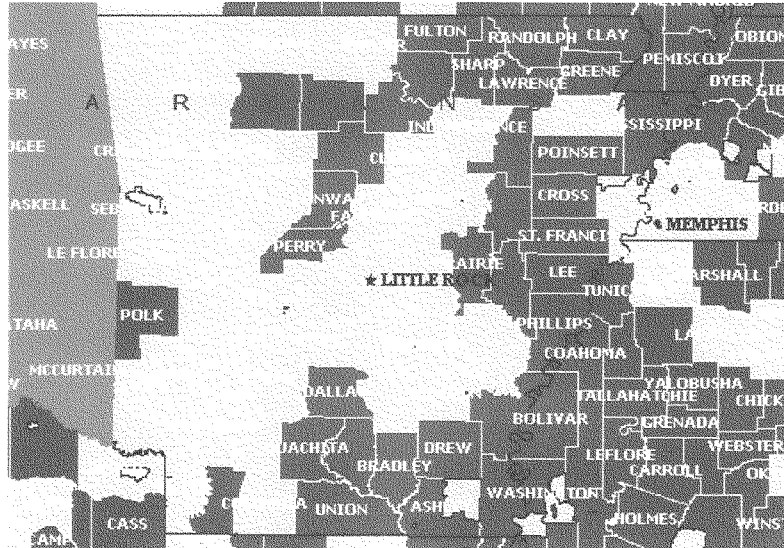
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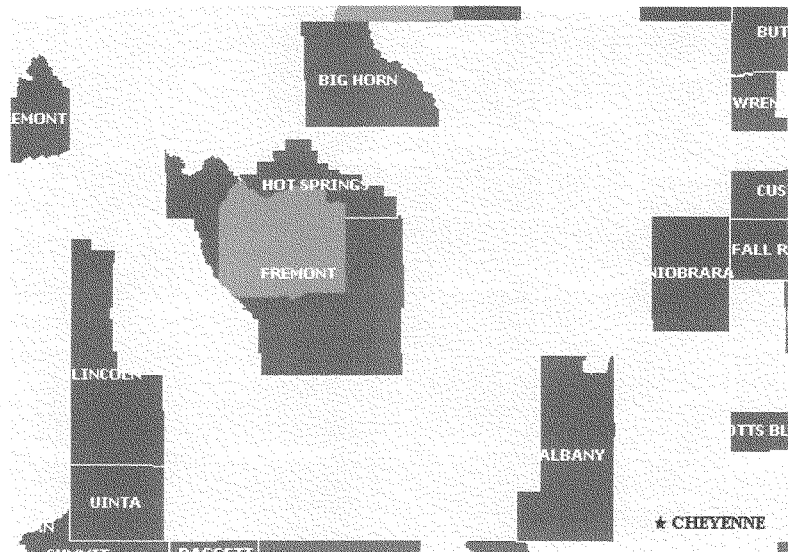


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## ARKANSAS

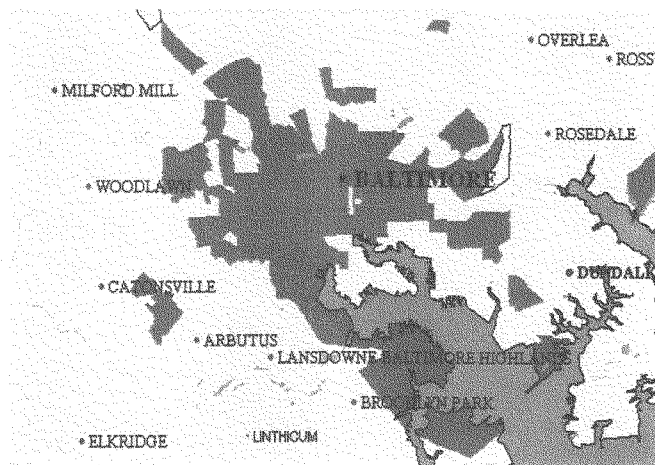
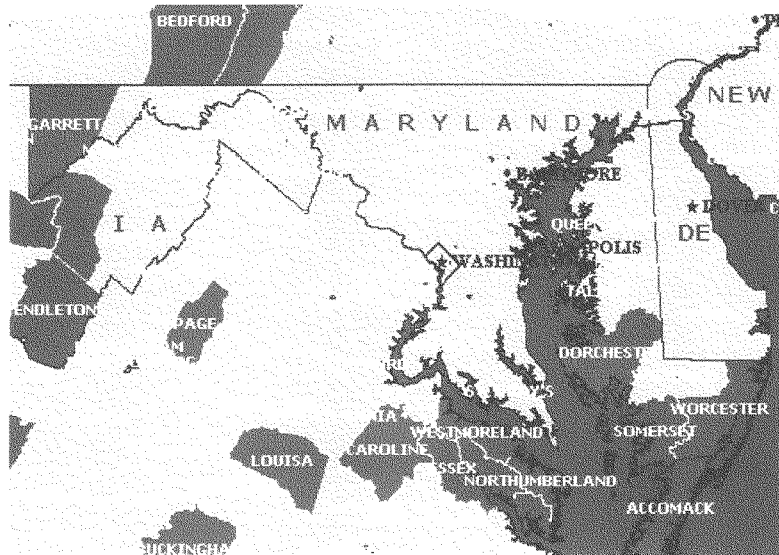


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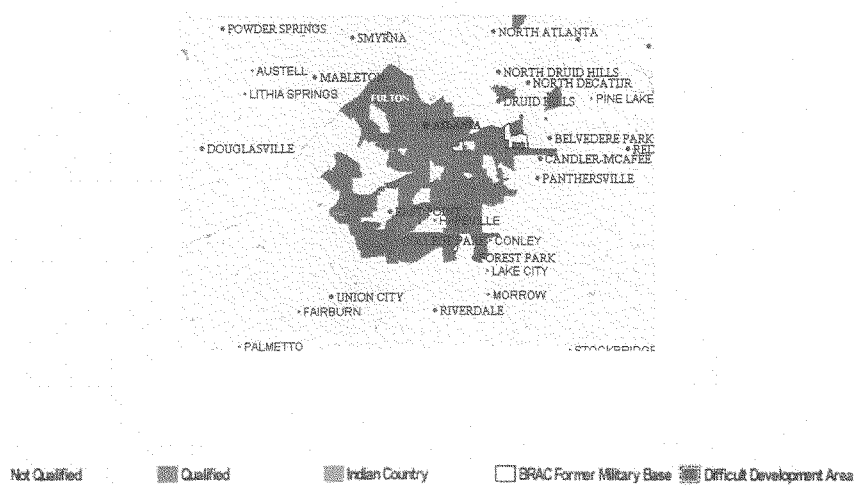
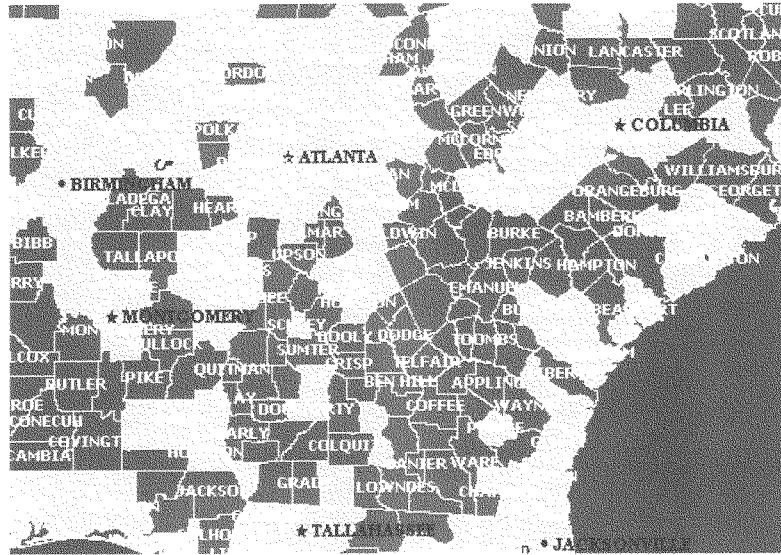
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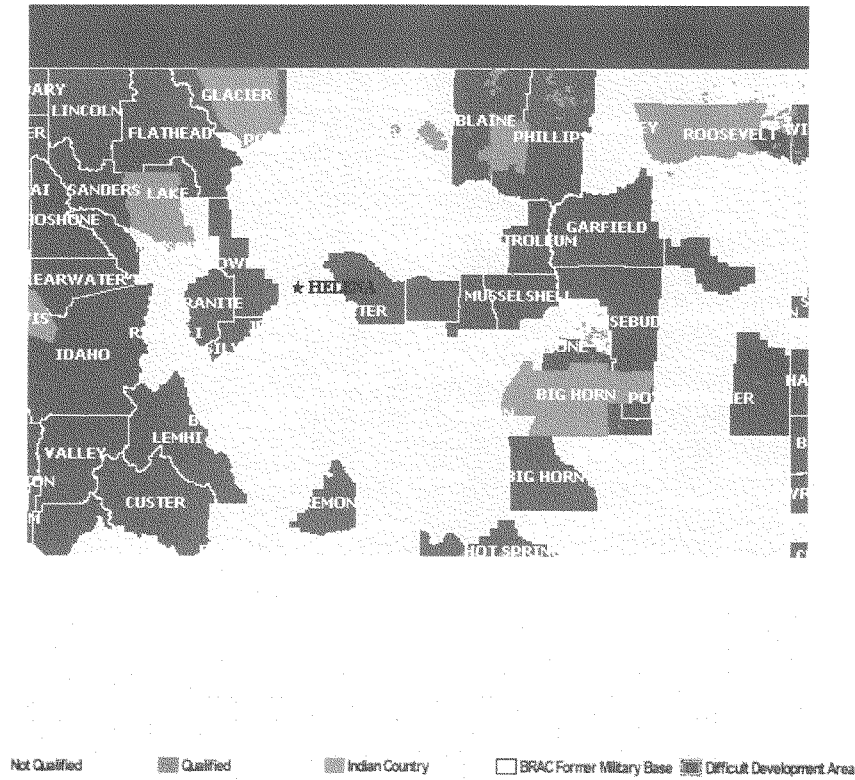
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## GEORGIA



# MONTANA



Chairman KERRY. That would be terrific. That is very helpful and we will collect them and we will put them to good use.

While we are on the subject of HUBZones, let me just ask you very quickly, in May of this year, the Inspector General, SBA's Inspector General, released a report showing a very high level of decertification of people who had been previously certified, and I think that the IG found that in fiscal year 2005, a 3-year certification review found that more than 81 percent of the firms that were initially approved as HUBZones were decertified or recommended for decertification. What is going on here and what needs to be done to guarantee a higher level of accountability for the HUBZone process?

Mr. NEWLAN. I think the number one component for the decertifications or the dropping out of the program is it costs extra money oftentimes to run your company in a HUBZone. You hire employees that live in a HUBZone that you might not necessarily hire, and then when you don't get any payback with winning and be awarded Federal contracts, firms are just walking away from the program. It is not—

Chairman KERRY. The lack of follow-through on procurement is, you are saying, a very significant mark in the failure rate.

Mr. NEWLAN. Yes, sir.

Chairman KERRY. What do you think—Ms. Silva, also, I wanted you to weigh in. I want everybody or anybody who wants to weigh in on this. This is essentially the heart of your testimony. We have both of our Government witnesses here and listening to you, so you have an opportunity both with the Defense Department and the SBA to kind of put it on the line as directly as you can. I am grateful to both of you for staying here to hear this because it is important. It is valuable, I think.

But, Ms. Silva, in your judgment, what is the biggest restraint on the ability of women, but also these other entities to be able to get the procurement that you have talked about? What happens, in your judgment?

Ms. SILVA. Well, I think accountability, first and foremost, and I will just give you a quick story of having a conversation with a Contracting Officer—well, actually not a Contracting Officer, a small business representative for one of the major agencies. I went to see him and actually talked about the fact that what happens to you if you don't meet your goals, and he told me that actually what happens is he walks around the other side of the table and he gives himself a stern talking to. That, I think in a nutshell, represents what happens with the goals. I mean, we have objectives that are set. We have goals in some instances—

Chairman KERRY. But nobody is enforcing it.

Ms. SILVA [continuing.] But nobody is enforcing it and there is no accountability.

Chairman KERRY. You are nodding.

Mr. NEWLAN. I couldn't agree more. Procurement officials throughout the country are breaking your statute, the statute that started HUBZones, started in this Committee, and, of course, all the goals are overseen by this Committee and they break them on a yearly basis and they get away with it.

Chairman KERRY. Do you think there is something inherent in the procurement process that drives a procurement officer to not do it because it is bothersome, because it is more of a hassle, because you don't get the bang for the buck? What are the ingredients of sitting there saying, I am not going to pay attention to this? It is easier for me to go off and do it here. Anybody. Mr. McCracken, you represent a large number of businesses in that regard—

Mr. MCCRACKEN. Well, I think that is—my view is that is exactly it. I mean, we are talking about a very large population of people, obviously, and so they are all going to have different motivations. But I think at the end of the day, it is easier to go to one company that can do a lot of things for you than to put out a number of smaller contracts, whereas those may be more efficient, they may save more money, but if it is only looked at as most efficient from the Contracting Officer's perspective, from their own lives as opposed to what is most efficient for the American taxpayer or the overall—

Chairman KERRY. To what degree is that a balance? I mean, to what degree does the taxpayer get a better return in that regard? Can you make the argument appropriately, as we always have here, and we try to, that there is a return to the taxpayer in broadening the base and in increasing the numbers of jobs and in sharing that wealth that it may not be recorded in the same way as the quick and easy 1-year return on, wow, we got the whole job done with one contract and here is what it cost us. I mean, is that the relationship that has to be better defined, or what?

Mr. MCCRACKEN. I think it does, and unfortunately, when we were moving primarily back in the 1990s toward much greater bundling of contracts, when that whole argument was going on effectively in Congress and in the Administration, the case was really only looked at, I thought at that time, from the perspective of what is most efficient for Government bureaucrats who are doing contracting. The whole rest of the balance wasn't really looked at.

Chairman KERRY. You were going to add to that, Ms. Silva, and then—

Ms. SILVA. No, I was just going to say that you eloquently pointed out, Senator Kerry, that basically what everyone knows, that the small businesses drive innovation, and whether it is the Federal Government or whether it is the private sector, we want the best quality for the best price, and when you tend to be focused on a kind of a single contractor and not opening up the opportunities for small business, you really limit the amount of innovation opportunity and advancement overall for the country in terms of being able to draw resources from pools of businesses that have a wide area of expertise but don't have accessibility or don't have visibility and don't have opportunity.

Chairman KERRY. Mr. Newlan.

Mr. NEWLAN. Mr. Chairman, one thing that has probably never been said at this Committee before, but I think customer service is getting in the way. If you think the way the Government is typically organized, you have a program office that has a need and funding and you have a procurement office whose job it is to make the award for the needs and services of that program office. And I have heard time and time again when I go to a contracting office

or procurement shop and say, why wasn't this a HUBZone set-aside?

Their answer is, we are in the customer service business. The program office is our customer and if we don't give them what they want, they are going to take this requirement to another contracting shop down the road or in another agency through an inter-agency government-wide acquisition contract and they will get what they want down there. So how can I give you, the HUBZone community, what you want, and I would like to give it to you, but I am going to lose the business. They are going to go down the street and it is going to be an unrestricted procurement down the street. So we have got procurement shops that want to do the right thing, i.e., customer service, and they fail to hit their goals because of it.

Chairman KERRY. Ms. Rice, you are at the real delivery level there.

Ms. RICE. Yes, I am.

Chairman KERRY. You see it where the rubber meets the road.

Ms. RICE. I see it a little differently. I think that Federal agencies and large prime contractors are risk-adverse and they don't want to take on new contractors, especially small businesses, if they don't know. So it is very, very difficult for the small business to break into Government contracting because of this risk-adverse attitude out there in Federal agencies—

Chairman KERRY. For the agency itself?

Ms. RICE. Federal agencies and—

Chairman KERRY. So you think there is a fear factor in terms of accountability? There is a reverse accountability. It is not just the accountability for meeting the standard, but there is accountability for meeting the goal of the procurement itself and they have a fear that somebody smaller isn't going to do that.

Ms. RICE. For performing the job. In a contract, they want the existing contractor to perform the job. They are very comfortable—

Chairman KERRY. Why? What is the reason, just comfort?

Ms. RICE. Comfort. They are comfortable with the status quo, with the current contractor, and if that is a large contractor, they are very risk-adverse to initiate change.

Chairman KERRY. Well, isn't the key to this—this is my last question and then I will turn to Senator Snowe—the accountability issue? I mean, don't you need somebody there? It is like any office anywhere. If somebody isn't saying, have you met your goal—

Ms. RICE. Oh, absolutely.

Chairman KERRY. Are you on top of this? When are you going to meet it?

Ms. RICE. Oh, I agree with all the panelists here—

Chairman KERRY. If you don't meet it, you are not going to work here anymore. It is a pretty simple equation, isn't it?

Ms. RICE. Absolutely, Mr. Chairman. I believe that with all the panelists here, we think that there is accountability that needs to be there at the Federal Contracting Officer level and the oversight that is needed by SBA.

Chairman KERRY. Senator Snowe.

Senator SNOWE. Thank you all for your great testimony. It is very helpful, given the wide array of problems and challenges that exist with the variety of programs that could so well serve small businesses in creating jobs, helping so many communities across this country, and particularly rural areas, as Ms. Rice and I know. In the State of Maine, the HUBZone Program, for example, is a prime illustration, very little money, because the Federal Government is going to be spending this money anyway through the contracting process and through procurement that to allow these small businesses in areas that are impoverished, under-employment, or major closure of a facility to help boost the economy in a particular region.

But I am just mystified to the extent to which it is such an under-utilized program. As you might recall, Ms. Rice, the Committee and I conducted forums in the counties in my State that are obviously designated as HUBZone eligible. I mean, roughly two-thirds of the State of Maine is designated as such, but it is only 118 companies as I mentioned earlier that are HUBZone eligible. And this is also true nationwide.

I am just wondering what steps you think that the Committee could take to improve this program. First of all, there are very few people aware of the program. That is what I discovered in conducting these forums across the State and through the counties. There is very little awareness about the existence of the program. They might have a different experience as you go around, Ms. Rice, but I think given the fact it is so under-utilized, that is obviously the case.

Now, second, could it be the process? I know you lend great assistance in helping people apply so they will become designated as eligible. Is the application process burdensome? What is your experience, and is there anything we can do to make it easier?

Ms. RICE. I don't really think the application process is that burdensome. There are steps that the small business has to go through in order to get certified by SBA, but if we are knowledgeable about that, the company trying to apply for certification, we will help them through the entire process.

What I have found is sometimes the small business sometimes doesn't follow through enough on getting certified. That was one of the things that—and lack of opportunity. Once they do get certified, they don't see the opportunity out there and to get recertified, they might not have that interest anymore in pursuing Federal contracts because they don't see—

Senator SNOWE. How often do they have to get recertified?

Ms. RICE. I think there is a recertification every 3 years or so that is looked at by the SBA, I believe.

Senator SNOWE. I would imagine on the recertification process overall.

Ms. RICE. I don't think—I am not that familiar with the recertification process.

Senator SNOWE. I see. Ok. I could just say, though, if you are running a small business, it is very difficult to find the time. You don't have the resources. You have to travel, the expense. It seems overwhelming, I mean, the bureaucracies and the paperwork.

Ms. RICE. It does—

Senator SNOWE. There is nothing there that is appealing, frankly, in order to go through that process and just in talking to businesses. They think, OK, this is going to be complex and difficult. So I think that is part of the issue. We have to simplify it in some way to make it user-friendly.

Ms. RICE. I think that the small business does see it as a complicated process.

Senator SNOWE. That is what I heard in comments, is just that, where are you going to find the time to just work their way through the maze. Your office is terrific and once you can get them there and hook them up with you, it is great. But it is getting to that point and many of these businesses are located in very rural areas. So I think it makes it especially difficult.

So if you have any suggestions you think that we can improve upon that process in some way that might also get the message out, I think that is the other issue. I just don't sense that this is widely known across the country. Do you, Mr. Newlan? I mean, what is your—

Mr. NEWLAN. I think that is the issue, Senator Snowe. It is getting the message out to the firms and then getting the message out to the Government procurement offices that we are serious and 3 percent means 3 percent.

The certification and recertification process is not very complicated as Government programs go. It is a completely online system. It is Internet-based, should take less than 30 minutes to apply and then 30 minutes to update the data every 3 years. So it is not a particularly burdensome administrative process, but the word has to get out to the community that there are benefits to being located in this HUBZone, Federal procurement benefits, and then to the procurement people.

What is it you don't understand about 3 percent as a floor? That is the message that has to get out. I am not sure how the SBA HUBZone Program Office would spend the \$15 million if the Congress were to appropriate it, but I am sure some of it would go to getting the message out.

Senator SNOWE. So you think that that would be one way of doing it, of helping?

Mr. NEWLAN. Oh, absolutely. Yes.

Senator SNOWE. You think that would advance the program in some way?

Mr. NEWLAN. Absolutely.

Senator SNOWE. Yes.

Mr. NEWLAN. Absolutely.

Senator SNOWE. You mentioned HUBZone goals not being met, and you talked about that earlier. Back in 2001, I referred to the GAO report. It cited a number of issues Federal contracting offices provided for not using the HUBZone Program. One was the relatively small number of certified HUBZone firms; two, the difficulty of identifying certified HUBZone firms that provide particular goods and services; and three, SBA guidance and internal policies that favored the 8(a) Program over the HUBZone Program. As I said, Senator Bond had sent a letter to the GAO requesting a follow-up on the 2001 GAO report detailing all these barriers. Do

you think that those are the same problems that exist today as they did back in 2001?

Mr. NEWLAN. Oh, no. Those problems have all been fixed.

Senator SNOWE. OK. So we have a new set of them?

Mr. NEWLAN. The small community issue is the HUBZone community is the second-largest specialty small business program in the Federal Government. The women-owned program is a larger program. There are more women-owned firms than there are HUBZone, but there are more HUBZone firms than there are service disabled veteran firms, veteran-owned firms, SDBs, or 8(a)s. So the community is large. It is getting the word out and having HUBZone set-asides created by the executive branch. That is the key.

Senator SNOWE. That is the key.

Mr. NEWLAN. The good thing about a HUBZone set-aside is you are guaranteed a HUBZone firm will win, and that will count towards the 3-percent goal.

Senator SNOWE. I see. Yes. There is much more incentive and it is probably more attractive, a guarantee that there is going to be that sort of—

Mr. NEWLAN. Some HUBZone firm is going to get it.

Senator SNOWE. Yes, exactly, rather than being in a pool.

Mr. McCracken, talking about expanding subcontracting opportunities, what do you think should be done in that regard? We talked earlier, and I know Mr. Hsu was talking about their whole certification process, especially to examine the larger companies that do the bait and switch.

Mr. MCCracken. Right.

Senator SNOWE. They front as small businesses and the next thing you know, they take over the contracts, as we have heard. So one of the issues that I think is important is that, really, the SBA doesn't have any strong authority to enforce any penalties with respect to those violators of these provisions. Do you think that that would be an effective approach?

Mr. MCCracken. I think it could be, yes. We certainly think there needs to be some additional enforcement in those areas. We have to make sure that the primes, when they don't use the firms that were included in their subcontracting plans, are very specific in reporting back to what their reasons for that were, and we have to make sure that we are very clear those are valid reasons, that there was a significant change in the contract or there is a significant change in the ability of that small firm to do the work. If there isn't what will be deemed a valid reason, then there should be some significant penalties, because—

Senator SNOWE. Do you think the lack of penalty, the lack of enforcement authority, is a detriment to preventing this kind of abuse, because we have seen a number of violators. Obviously, it has been pervasive. It is not a minimal problem.

Mr. MCCracken. It is not a small problem at all. When we get a group of small companies together in a room that do contracting and do subcontracting work, I would probably say that the most common story I hear, is that we have been used by these companies again and again. Many of them have just stopped working with some of these larger companies. The large companies will



reach out to them. They are not campaigning, necessarily. The large companies will come to them and say, hey, we have this great opportunity. They will put in a great deal of time and effort in working with the company and the company gets the contract and they never hear from them again. It happens again and again.

Senator SNOWE. One of the provisions I had in last year's reauthorization—and hopefully we can include it at some point—is the disbarment of those who violate the requirements. Do you think that would be helpful? Do you think that would be a disincentive?

Mr. MCCracken. It would certainly be a disincentive.

[Laughter.]

Mr. MCCracken. I think we would tend to support that. We would have to make clear that, you know, it is a pretty severe penalty, so you have to make sure that there are clear definitions in place. But if it can clearly be shown that companies are doing what we described, then absolutely.

Senator SNOWE. Yes. Given what has happened out there, it seems to me that we need to do something. I mean, we hear about it consistently before this Committee.

Ms. Rice, you spoke to that question, as well.

Ms. RICE. With regard to subcontracting?

Senator SNOWE. Yes, well, and to the Maine company, the machine tool company.

Ms. RICE. Yes. It did not become a subcontractor of that prime for various reasons. But I do think there should be an enforcement of goals. Prime contractors often do not attain those goals. There should be some oversight by SBA and enforcement of why the prime is not attaining those goals.

Senator SNOWE. Ms. Silva, what do you think should be the primary focus of our priorities, given your experience with small business and the varying contracting procedures? Should it be size regulations? What do you think we should focus on?

Ms. SILVA. Well, I think that you have identified the major obstacle to the programs that exist currently is enforceability and accountability. Before we actually go further in creating more programs and expanding programs, we need to make sure that the programs that are in place—the goals that are in place—that there are repercussions, whether you are talking about disbarment or whether you are talking about any kind of repercussions at the prime level for non-use of subcontractors, or whether it is a 3 percent or 5 percent goal. But what happens when those goals aren't met? So I think it is really a question of accountability. As a priority, it is accountability.

Senator SNOWE. Would you all agree with that, in terms of that?

OK. Thank you, Mr. Chairman. Thank you all.

Chairman KERRY. Thank you, Senator Snowe. Accountability, accountability seems to be leaking out here. It is just a question of leadership.

Senator SNOWE. Yes.

Chairman KERRY. We are certainly going to, in this Committee, do our best to try to achieve that accountability and watch what is happening.

I do have some questions that I am going to submit in writing, pursuant to the 2-week period for other colleagues, also.

We really want to thank you for your contribution here. I think it has been very helpful to understanding the challenge.

Just one very quick question I might ask. Mr. McCracken, you suggested that the goal needs to be higher than the 23 percent. In fact, you suggested, I think, a third. So you are looking at 33 percent. Which, in your judgment, is more important, since we are not meeting the goal now of the 23 percent? Is it going up to the higher percentage or the enforcement and achieve the 23?

Mr. MCCRACKEN. If we were forced to choose between one or the other, I think enforcement of the current system, we think would be probably—

Chairman KERRY. But you think, in fact, both ought to happen.

Mr. MCCRACKEN. But we think both ought to happen. I don't think that they ought to be mutually exclusive goals.

Chairman KERRY. Fair enough. Not necessarily. I am not sure if that is the right level or not. That is something we have to look at. But I appreciate the thought. Some of the questions I want to pursue in writing, would be sort of what the appropriate level is, how you achieve that, and so forth.

Is there anything anybody felt they really had to say that they didn't have a chance to say, especially Ms. Rice? You traveled that distance. I want to make sure you are fully on record.

Senator SNOWE. I do have a question, one more question.

Chairman KERRY. Go ahead.

Senator SNOWE. We talked about a redefinition of HUBZone, because in Penobscot County, for example, they are a metropolitan area.

[Laughter.]

Chairman KERRY. Boy, that is a stretch.

Senator SNOWE. Some of the areas are excluded as HUBZones, so we wanted to redefine for HUBZone eligibility. Do you agree with that?

Ms. RICE. Yes. In fact, that is what I was hinting at in my testimony was that very fact. Penobscot County is a very large, long county and very depressed areas are not defined as HUBZones because they got counted with larger more prosperous areas. Thus, any small business in that area can't be certified as a HUBZone company, disqualifying them from participation in the program. So looking at that, how you define HUBZone areas, should be part of the Committee's oversight and—yes, I think that is something that should be looked at.

Senator SNOWE. I appreciate that. Mr. Newlan, do you agree?

Mr. NEWLAN. I completely agree, yes.

Senator SNOWE. OK. Thank you very much. Thank you again for being here today.

Chairman KERRY. Ms. Rice, thank you. How come you don't talk like some of those folks out there?

[Laughter.]

Chairman KERRY. Anyway, we are glad to have you here. Thank you all very much.

We stand adjourned. Thanks.

[Whereupon, at 4:12 p.m., the Committee was adjourned.]

## **APPENDIX MATERIAL SUBMITTED**

**STATEMENT OF  
SENATOR CHRISTOPHER S. BOND  
BEFORE THE  
SENATE COMMITTEE ON SMALL BUSINESS AND  
ENTREPRENEURSHIP  
July 18, 2007**

Mr. Chairman and Senator Snowe: Thank you for holding this hearing on the subject of "Increasing Government Accountability and Ensuring Fairness in Small Business Contracting." Although we have made strides in this area, we still have a long way to go.

I am pleased to welcome Ron Newlan, Chairman of the HUBZone Contractors National Council, with whom I have had the pleasure of working, and the rest of the witnesses to this Hearing.

Today's hearing focuses on the problems that make it difficult for small businesses to participate in government contracts. One of the most difficult problems to tackle has been bundling. Contract bundling is promoted as making the contracting process more streamlined and providing cost savings to the government. However, bundling actually results in diminishing the opportunities for small businesses to participate in government contracting. Bluntly, it is easier to bundle than to try to work out separate contracts. We have to find a way to make bundling less desirable. We also need more oversight. Using the excuse that we have far too few people in oversight and procurement is wearing thin. So I applaud SBA's request for more procurement officers.

Looking into size standards is also probably necessary, but we must be careful that we do not size too large; otherwise why have set-aside goals for so-called "small" businesses? Size standards must be fair both to small business and to those businesses that started out small and have shown good growth – but we must be careful that if we do choose to redefine the size of small businesses that we remain on the small side of medium and not on the large side – a very difficult task.

Government agencies that attain their small business contracting goals must be acknowledged and commended. However, we must not let them rest on their laurels. Although some goals are met, and some are even exceeded, many are not. For example, women-owned businesses are far

from meeting their goals. Goals not met must be given another look as to why they are not being met.

Having authored the HUBZone program, I know there is a statutory goal for HUBZone contracting set at 3% of total Federal contracting dollars. I also know that despite the large size of the HUBZone contractor community, the Federal Government has never come close to meeting this 3% level. In FY 2005, the Government achieved 1.94% -- and I understand this was by far the best year ever.

Administrator Preston is working to expand opportunities for all small business interests and I am encouraged by his commitment to more accurate accounting. However, I ask that the SBA Headquarters HUBZone Program be retained its budget line item status. I also want to ensure that any increase in set-aside goals is fair to everyone and does not unfairly single out any program for a smaller share of the pie, particularly the HUBZone program. I will be keeping a keen eye out for those suggested changes.

I am now most interested in hearing our witnesses' ideas for solutions.

Thank you Mr. Chairman.

## RESPONSE BY RONALD NEWLAND TO WRITTEN QUESTIONS FROM SENATOR BOND

*Question.* I noted in your testimony your recommendation to fund the SBA HUBZone Office at the \$15 million level. Would you please elaborate on that. Thank you.

*Answer.* I believe that the SBA Headquarters HUBZone Program Office should be funded at the annual level of \$15 million and they should have their own line item to accomplish the following tasks:

- Train procurement personnel throughout the Government on the HUBZone Program
- Work closely with any Department that does not achieve their 3 percent annual HUBZone Program goal
- Work with the SBA PCRs to ensure HUBZone contracting meets the 3 percent contracting level
- Build the systems to facilitate enhancing HUBZone contracting
- Provide adequate staffing to manage the Program
- Allow for increased HUBZone Program re-examination
- Provide the resources to SBA so they can encourage state governments to utilize the SBA-certified firms for state contracting
- Add a business development component to assist the less experienced HUBZone firms

Thank you for your interest in this matter.

## RESPONSE BY PAUL HSU TO WRITTEN QUESTIONS FROM SENATOR KERRY

*Question 1.* What plan does the SBA have to increase the number of PCRs beyond the nine slated to be hired in the next 2 years?

*Answer.* At this juncture, we believe that a full complement of sixty-six procurement center representatives (PCRs) will be sufficient to support attainment of statutory small business and socioeconomic procurement preference program goals. We believe that this number will be adequate given the systemic steps that we are now taking to increase contracting opportunities for small businesses, women owned small businesses, service disabled veteran owned small businesses and HUBZone small businesses. These measures are described in our response to Senator Snowe's first question, below.

*Question 2.* Will the SBA release its updated size standards on a rolling basis as they are completed or all at once at the end of the 24-month time period?

SBA plans to publish a series of proposed rules during a 24-month period. During that time, SBA will evaluate a specific group of related industries and issue proposed rules to revise size standards as appropriate. Upon completion of a group of industries, an evaluation of another group of industries will begin. This process will continue until all industry size standards have been evaluated.

## RESPONSE BY PAUL HSU TO WRITTEN QUESTIONS FROM SENATOR LIEBERMAN

*Question 1.* Mr. Hsu: The SBA has asked 1000 prime contractors to review voluntarily their status as small business contractors with regards to size. Has the SBA set my guidelines for penalties if such firms do not comply with this request?

*Answer.* The letter requested *voluntary action* on the part of prime contractors, beyond that required under the newly implemented regulations, to accelerate improvement of the contracting data base regarding characterization of awards as having been made to small firms. In essence, the letter sought cooperation and collaboration with large prime contractors. Because the letter requested voluntary action on the part of vendors, it contemplated no adverse action for failure to act. Indeed, threat of adverse action would have undermined the intent and objective of the letter.

*Question 2.* Mr. Hsu: In your testimony, you stated that there may be some "constitutional" considerations for small business programs based upon gender. Can you elaborate on these concerns? Why would there be constitutional restrictions for a program to assist women-owned businesses in securing Federal contracts? Does the SBA support such an effort?

*Answer.* The Equal Protection Clause of the United States Constitution and court cases interpreting that clause require a heightened scrutiny analysis for gender-based set-aside programs. For that reason, SBA and the Department of Justice are working together to ensure compliance with this constitutional standard.

*Question 3.* Mr. Hsu and Mr. Martoccia: The San Diego based company, SAIC, is a multibillion dollar firm with more than 44,000 employees worldwide. But last year, SAIC received over \$512 million in Government based small business contracts with the Defense Department. Lockheed Martin and General Dynamics also boasted high numbers for small business contracts with the Defense Department. I understand that the Small Business Administration has different definitions for what constitutes a “small business” in its regulations, but I’m fairly certain that none of these large companies fits the bill. How will the SBA address this problem? Are current contracts being reviewed? What will be the penalty for the failure of a firm to recertify as a small business?

Answer. The SBA has, and is addressing this issue through a number of measures. On November 15, 2006, the Agency published regulations requiring periodic recertification of size on long-term contracts to ensure greater accuracy in reporting, and to encourage agencies to pursue new small business sources. On July 5, 2007, a companion change to the Federal Acquisition Regulation (FAR) was issued. The SBA’s regulation, and the change to the FAR, are effective June 30, 2007. The regulations may apply to existing contracts and acquisitions and mergers of companies that occurred before June 30, 2007, rather than merely applying prospectively. This makes them much more meaningful and effective.

Over the last eighteen months, SBA has worked very closely with acquisition agencies and the Integrated Acquisition Environment (IAE) to ‘perfect the electronic records’ in contracting data base, ‘scrub’ data, and to make systemic changes to reduce the possibility that vendors that are ‘other than small’ are miscoded as ‘small.’

During the summer of 2006, some \$12 billion of fiscal year 2005 contract awards, characterized as having been made to small businesses, was challenged. In September 2006, the Administrators of the Office of Federal Procurement Policy (OFPP) and SBA required agencies to review their 2005 procurement data, identify discrepancies, and correct the records, as necessary. This process was completed in March of 2007.

In April 2007, SBA required that agencies review fiscal year 2006 contracting data by June 30, 2007, and IAE deployed an analytical ‘tool’ and issued a battery of ‘exception’ reports to assist in data cleansing. On June 30, 2007, IAE ‘locked down’ the contracting data base, and on August 17, 2007, SBA issued the fiscal year 2006 Small Business Goaling Report, and re-issued the fiscal year 2005 Small Business Goaling Report.

On August 17, 2007, SBA issued the first Small Business Procurement Scorecard. The Scorecard is modeled after the one used to track the President’s Management Agenda. It provides for a ‘current’ status rating, based on actual performance, and a ‘progress’ rating based on what agencies have done, and are planning to do, to improve performance. Notably, the scorecard includes an element addressing agencies efforts to ensure data integrity.

We also note that in March 2007, OFPP began requiring that the Chief Acquisition Officers of agencies establish comprehensive, statistically-valid contracting data verification and validation procedures, and that they certify data accuracy and completeness to the General Services Administration (GSA), the ‘owner’ of FPDS-NG, each year. The first statement of data verification and validation must be submitted by December 15, 2007.

Collectively, these measures will yield quantum improvement in contracting data integrity. It may take fifteen to eighteen months for the full benefits of these improvements to accrue. But, we believe that fiscal year 2006 data is substantially more reliable than that of prior years, and that the quality of data will increase measurably each year, well into the future.

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RESPONSE BY PAUL HSU TO WRITTEN QUESTIONS FROM SENATOR SNOWE

*Question 1.* You referred to an ‘initiative increasing opportunities for American small business . . . different things we want to do.’ Beside the Electronic Procurement Center Representative, what does this initiative entail?

Answer. The initiative referenced is intended to assist small businesses in securing more Federal procurement opportunities, by concentrating on areas in which the Federal Government has failed to meet contracting goals—HUBZone, Service Disabled Veteran Owned Small Business, and Women Owned Small Business Programs. The initiative includes implementation of an enhancement to the Central Contractor Registration (CCR)/ Dynamic Small Business Search engine called *Quick Market Search*. This tool will allow procurement officials to conduct market searches quickly and easily to find firms that can perform Federal contracts.

Under this initiative, Procurement Center Representatives' (PCRs) efforts will be geared more fully to assisting Federal buying activities in meeting their goals. Up until now, requirement coordination between SBA and procuring agencies was essentially limited to review and appeal of unrestricted requirements for possible small business set aside. Under this initiative, requirement coordination will extend to review and appeal of requirements for set-asides under HUBZone, Service Disabled Veteran Owned Small Businesses, and Women Owned Small Business Programs. Specifically, PCRs will review *existing unrestricted requirements, and new requirements, restricted and unrestricted*, for appropriateness of possible set-aside under not only small business program, but also under above noted programs. Further, SBA will exercise formal authority to appeal decisions not to set-aside requirements under not only small business program, but also under above noted programs.

*Question 2.* You [Dr. Hsu] stated, "We will implement the Women-Owned Small Business Contract Program by the end of this fiscal year." Does that mean by October 1, 2007, certain contracts will be set-aside for women-owned small business; please explain this situation?

Answer. At this juncture, our draft final rule has been sent to OMB and remains in interagency clearance. The regulation will set forth an effective date which will define when requirements in eligible industries may be set-aside for competition under the program.

*Question 3.* What is SBA's specific plan and timetable for ensuring the governmentwide service disabled, women owned, and HUBZone goals are met?

Answer. Please reference our answer to Senator Snowe's question 1., above. At this time, we cannot reliably estimate when the each of the socioeconomic preference goals will be met governmentwide. However, it is our intention to work with acquisition agencies, at national and buying office levels, to develop and implement strategies that will yield increased opportunities for small businesses under these programs that will be reflected in higher levels of goal accomplishment.

*Question 4.* Prime and subcontracting data are equally important. Data is presently unavailable for subcontracting goaling by agency. Please provide these Government-wide statistics for years FY 04, FY 05, and including your most recent data.

Answer. Government-wide data for fiscal years 2004, 2005, and 2006 has been posted to our website, and can be found at the following address: [http://www.sba.gov/aboutsba/sbaprograms/goals/SBGR\\_2006\\_SCGR.html](http://www.sba.gov/aboutsba/sbaprograms/goals/SBGR_2006_SCGR.html).

*Question 5.* What are the ramifications SBA proposes for corporations that do not follow Administrator Preston's letter on July 3, 2007, requesting hundreds of larger corporations to identify and report by September 30, 2007, to the SBA, any small business contracts that their corporation or subsidiaries presently hold?

Answer. The letter requested *voluntary action* on the part of prime contractors, beyond that required under the newly implemented regulations, to accelerate improvement of the contracting data base regarding characterization of awards as having been made to small firms. In essence, the letter sought cooperation and collaboration with large prime contractors. Because the letter requested voluntary action on the part of vendors, it contemplated no adverse action for failure to act. Indeed, threat of adverse action would have undermined the intent and objective of the letter.

*Question 6.* Following my recent GAO request for an overall review of HUBZone underutilization, what are the effects of decertification on HUBZone firms? Why are firms being decertified? What can be done to increase HUBZone certification?

Answer. HUBZone firms that no longer meet the basic eligibility criteria and therefore need to be decertified must remain out of the program for a full year from the date of decertification.

The underlying cause for failure to recertify firms under the HUBZone program, pursuant to program examinations, is substantially non-responsiveness. For those firms expressing a reason for not responding to a request for continuing eligibility information, most often cited is limited opportunity to compete for contracts set-aside under the HUBZone program. This may suggest that firms that have committed resources to secure HUBZone status, see limited direct benefit to continuing in the program.

We believe that increasing set-aside of requirements under the HUBZone program will increase interest in entering the program, and remaining in it. As noted above, increasing set-aside of requirements and award of contracts under the HUBZone, Women Owned Small Business and Service Disabled Veteran Owned Business pro-



grams are key objective of the Agency, and the focus of its principle government contracting initiative for the foreseeable future.

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RESPONSE BY ANTHONY MARTOCCIA TO WRITTEN QUESTIONS FROM SENATOR KERRY

*Question 1.* What is the Department of Defense doing to protect small business sub-contractors who are not getting paid in a timely fashion by their prime contractors?

Answer. The Department's policy is to assist small business concerns, particularly small disadvantaged business firms in obtaining payments under their prime contracts, late payment, interest penalties, or information on contractual payment provisions. Pursuant with the Government Accountability Office's recommendation, Wide Area Work Flow—Receipts and Acceptance (WAWF-RA) will soon be updated to include a small business indicator flag to alert Department of Defense (DoD) payment officials when an invoice is from a small business and to process the invoice expeditiously.

The DoD follows the policy in Part 32 of the Federal Acquisition Regulation to ensure that prime contractors establish procedures for the timely payment of amounts due pursuant to the terms of their subcontract(s). DoD contracting officers will encourage the prime contractor to make timely payments to the subcontractor, or the contracting officer may reduce or suspend progress payments until the contractor complies. If prime contractors fail to pay their subcontractors in a timely manner then, negative past performance information is reported into the Federal Government Past Performance Information Retrieval System (PPIRS.) PPIRS is a Web-enabled, Government-wide application that provides timely and pertinent past contractor performance information to the Federal acquisition community to use in making source selection decisions.

*Question 2.* Do you believe that the prompt payment act should be extended to all subcontracting?

Answer. No. The Department has no ability to enforce the provisions or resolve disagreements regarding payment amounts or timing between prime contractors and their subcontractors.

*Question 3.* When DoD relies on the credentials of subcontractors in the awarding of bids don't they have an interest in ensuring that those subcontractors are used for the work?

Answer. To the extent the Government evaluates the capabilities of proposed subcontractors in making award decisions with respect to prime contracts, the Government would expect any replacement subcontractor to have equivalent capabilities.

*Question 4.* In your testimony you stated that the DoD has suffered from a lack of funding for contracting officers. What plan does the DoD have to increase its number of contracting officers?

Answer. The Director of Defense Procurement and Acquisition Policy (DPAP), serving as the Functional Advisor for the Contracting, Purchasing and Industrial/Contract Property Management Career Field (hereinafter referred to as the contracting community) is working hand-in-hand with the Department's Senior Acquisition Executives to develop a human capital plan for this community—drawing upon the strengths of the contracting community to ensure the Department has the right people, with the right skills mix.

DPAP's human capital strategy will ensure that the Department's contracting community continues to effectively deliver equipment and services that meet the needs of the warfighters. DPAP is using competency-based management techniques to define current and future competency needs to support the Department's contracting community. By using competency-based management, DPAP is able to assess competencies resident in the contracting community, and identify gaps for current and future requirements. The Department of Defense completed development of a comprehensive competency model for the contracting career field in March 2007. Beginning in the second quarter of calendar year 2007 and continuing through 2008, the Defense Acquisition University and DPAP are working with the contracting community to assess workload demands for these competencies and the degree to which members of the workforce possess these competencies. The results of these competency-based capability assessments will reveal where gaps exist in personnel and/or skill levels so that the Department can adjust efforts in hiring, allocation of resources and training to address these gaps.

*Question 5.* At present, what percentage of contracts are reviewed for bundling at the department?

Answer. Defense Federal Acquisition Regulation Supplement 219.201 requires that all acquisitions over \$10,000, except those under \$100,000 that are totally set-aside for small business concerns, be reviewed by a small business specialist. Bundling is one element of this review.

*Question 6.* Once a bundled contract is identified, what steps does the department take to break out contracting opportunities for small businesses?

Answer. There are a number of strategies a DoD acquisition team may employ to avoid or lessen the adverse impact of contract bundling on small businesses, such as:

- Conduct industry forums or pre-solicitation conferences to determine small business interest and/or suggestions for potential strategies that will allow small businesses to participate as prime contractors;
- Remove obstacles to small business participation by configuring solicitations to be small business friendly. For example, if practicable, divide requirements into smaller geographic requirements or quantities, and/or adjust delivery schedules to increase the likelihood of small business participation;
- Encourage teaming arrangements or joint ventures involving two or more small businesses;
- Take into account circumstances that may negatively affect the small business community. For example, the preservation of the small business base may be a significant consideration for avoiding bundling.

Even if bundling can be justified by its anticipated benefits, the use of acquisition strategies that increase small business subcontracting opportunities are encouraged throughout the entire acquisition process—from the pre-award stage to post-award. To maximize small business participation, the acquisition team may develop a strategy that results not only in the setting of goals, but also ensures the achievement of these goals. In the pre-award stage, the acquisition team emphasizes the prime contractors' small business subcontracting performance during the source selection, including the establishment of aggressive subcontracting goals and incentives. Acquisition strategy teams are encouraged to implement a process (established during the pre-award stage) to ensure the prime contractor's achievement of subcontracting goals and enforcement of the requirements of the resultant subcontracting plan.

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RESPONSE BY ANTHONY MARTOCCIA TO WRITTEN QUESTIONS FROM SENATOR LIEBERMAN

*Question 1.* In your testimony, you indicated that a comprehensive review of small business size standards is needed. To meet the Defense Department's small business contracting goals, how would you change current SBA size standard guidelines by industry? Will the Defense Department consult with the SBA as the SBA issues new guidelines on size standards?

Answer. The Department of Defense (DoD) is currently working with the Small Business Administration (SBA) to determine which North American Industry Classification System codes small business size standards need adjusting and the magnitude of any necessary adjustment.

In March of 2007 representatives from the DoD Office of Small Business Programs (OSBP) met with staff members from the SBA and the Office of Federal Procurement Policy to discuss this matter at length. Since then the DoD OSBP has conducted a preliminary analysis to assess changes in the percentage of contracts awarded by the Department to small businesses for the most highly demanded commodities over the last 5 years. We intend to forward these results to the SBA.

*Question 2.* What is the Defense Department's goal for the percentage of contracts awarded to women-owned small businesses? What is the current percentage of Defense Department contracts awarded to women-owned small businesses? Do you have a plan to increase the current percentage? What is that plan? Is it a priority within the department?

Answer. The Department's goal for participation by women-owned small business (WOSB) is 5 percent of all eligible prime contract dollars and 5 percent of the total dollars subcontracted. In FY 2006 the Department of Defense (DoD) achieved 2.9 percent for WOSB prime contracting; the Department's subcontracting achievement for WOSBs was 5.5 percent.

Within DoD the WOSB is a special emphasis program; therefore improving our performance in this small business category is a priority. Our plan includes a combination of training (including Web casts) and outreach to emphasize the importance to our acquisition professionals of the need to maximize contracting opportunities for WOSBs. We anticipate that with the publication of the Small Business Administration's final rule regarding set-asides for WOSB (as authorized by section 8(m) of

the Small Business Act, Public Law 85-536, as amended), we will have an even greater ability to increase our contract awards to companies owned by women.

The Military Departments and Defense Agencies use outreach and matchmaking events to ensure that WOSB's are kept informed regarding contracting and subcontracting opportunities within the Department. In addition, the Procurement Technical Assistance Centers, which have offices and representatives in every state, participate in numerous outreach events and provide training and one-on-one counseling.

*Question 3.* The San Diego based company, SAIC, is a multi-billion dollar firm with more than 44,000 employees worldwide. But last year, SAIC received over \$512 million in government based small business contracts with the Defense Department. Lockheed Martin and General Dynamics also boasted high numbers for small business contracts with the Defense Department. I understand that the Small Business Administration has different definitions for what constitutes a "small business" in its regulations, but I'm fairly certain that none of these large companies fits the bill. How will the SBA address this problem? Are current contracts being reviewed? What will be the penalty for the failure of a firm to recertify as a small business?

Answer. There have been instances where a large business has mistakenly been identified as small in the Federal Procurement Data System—Next Generation (FPD-SG). DoD has acknowledged there were miscoding errors in the FPDS-NG and has dedicated a considerable amount of time and personnel resources to correct these data entry errors.

The Small Business Administration formally requested all agencies to revalidate and correct certain historic records with respect to business size. The Defense Manpower Data Center is continually running reports in the FPDS-NG to flag activity that may appear to have been reported incorrectly for small business size determination. As of FY07, all DoD contract action reports are submitted to the FPDS-NG. Most of the DoD contract action reports in the FPDS-NG for FY06 and prior years are a result of migrated data from DoD's historical DD350 system. Due to the differences in the two systems, data migration was extremely complex requiring revalidation and correction of individual records. DoD is working with General Services Administration (GSA) to manage data corrections.

The Defense Department has a number of initiatives in place to address data accuracy in reporting. In May of this year DoD sent a letter to the Administrator, Office of Management and Budget, to provide the Department's plan for improving the data in the FPDS-NG. In addition to the plan, DoD has established a Data Management Team to oversee the Department's data improvement program. DoD's plan also includes dedicated resources to the FPDS-NG training with an emphasis on improving data quality.

Congress has also expressed concern that a small business firm that received a contract award may, over the life of a contract, outgrow its small business size status yet still be counted by the awarding agency as a small business. This is most likely to occur in long-term contracts or when a contractor is merged or is acquired by another company. To account for these occurrences and ensure that the source data used to populate the FPDS-NG is as accurate as possible, DoD worked with the Small Business Administration (SBA) in support of its efforts to develop a new rule for small business size "rerepresentation."

SBA published a final rule in the Federal Register on November 15, 2006. This rule was implemented in the Federal Acquisition Regulations (FAR) on July 5, 2007. The FAR revision became effective on June 30, 2007 and was issued as an interim rule to provide an opportunity for public comment. The final rule may vary from the interim rule to reflect changes resulting from the comments received.

Under the interim rule, a contractor that represented itself as a small business before contract award must now "rerepresent" its size status within 30 days in the event of a novation agreement or merger or acquisition that does not require a novation and for a long-term contract (i.e., a contract with an anticipated performance period longer than 5 years). This must be completed within 60-120 days prior to the end of the fifth year of the contract and prior to the exercise of any remaining contract option. Furthermore, if the contractor "rerepresents" that it is no longer a small business, then from that point forward the agency may no longer include the value of options exercised or the orders issued against the contract in its small business prime contracting goal achievements.

DoD is working with GSA (the administrator of the FPDS-NG system) to make the necessary modifications to the FPDS-NG to accommodate the "rerepresentation" rule requirements.

Current contracts are being reviewed, in accordance with the applicable acquisition regulations and policies. The new FAR clause was added to solicitations issued and contracts awarded on or after June 30, 2007.

If the conditions of the FAR “rerepresentation” rule are met and a contracting officer receives a size protest or if the contracting officer has reason to believe the contractor is no longer small, the size protest would be submitted to the SBA in accordance with FAR 19.302. A change in size status does not change the terms and conditions of the contract and does not require termination of the contract.

*Question 4.* I have received some less than flattering reports about the Defense Department’s Mentor-Protégé program. Some large contractors (mentors) are apparently requiring small business subcontractors to sign up for the program to generate reimbursable expenses for the mentor company. Can you explain how this program works? Specifically, how much money can a large contractor receive in reimbursed expenses when the firm takes on a protégé?

Answer. All Department of Defense (DoD) Mentor-Protégé agreements must undergo an extensive review and approval process. This review includes an in depth assessment of the developmental assistance that will be provided, the period of performance of the agreement, and the funding required.

Section 831 of Public Law 101–510, as amended, and the Defense Federal Acquisition Regulation Supplement mandate reports and reviews on the performance of both the mentor and protégé. The Defense Contract Management Agency (DCMA) is required to perform annual performance reviews on every active Mentor-Protégé agreement. Their review includes evaluation of the developmental assistance provided by the mentor to the protégé (which includes audit by the Defense Contract Audit Agency to ensure that the expenditures are allowable, allocable and reasonable), and separate interviews with both the mentor and the protégé to establish the health and welfare of the agreement.

In addition to the report mentioned above, mentors and protégés are mandated as part of their participation to provide the DoD OSBP a semi-annual report (recently updated to a quarterly requirement) on their return on investment, employment, performance metrics and milestones, contract awards, and the status of funding provided. Misuse of funding is not tolerated.

The total amount reimbursed to a mentor firm for costs of assistance furnished in a fiscal year to a protégé firm may not exceed \$1 million, except when the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

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RESPONSE BY ANTHONY MARTOCCIA TO WRITTEN QUESTIONS FROM SENATOR SNOWE

*Question 1.* You stated at the hearing that “the Department and Secretary Gates and my boss are totally committed . . .” to make opportunities available to service-disabled veterans. Please provide specifics of the commitments and the timeframe when DoD will meet the 3 percent goal for service-disabled veterans.

Answer. The Department has made achievement of the service-disabled veteran-owned small business (SDVOSB) goal one of our highest priorities. The following list provides a chronology of the actions taken by the Department during Fiscal Year 2007, to promote contracting with SDVOSB firms:

- April 12, 2007—Mr. Kenneth Krieg, the Under Secretary for Acquisition, Technology & Logistics, issues memorandum to Department of Defense (DoD) leadership, making interagency commitment to use the General Services Administration (GSA) Veterans Government-wide Acquisition Contract and pursuing SDVOSB 3 percent goal “with vigor”.
- May 18, 2007—Mr. Shay Assad, Director, Defense Procurement and Policy, issues memorandum to senior acquisition officials encouraging the use of set-aside and sole source tools to increase procurement awards to SDVOSBs.
- May 24, 2007—Mr. Tony Martoccia, Director, DoD Office of Small Business Programs (OSBP), issues memorandum to senior acquisition officials encouraging acquisition personnel to increase awards to SDVOSBs.
- June 6, 2007—Beginning of a series of interviews with the Director, OSBP by various news organizations including ABC News, National Public Radio, Federal Computer Week, the Kansas City Star, Federal News, the Federal Times, USA Radio, and WTOP-FM, regarding DoD’s initiatives to increase contract awards to SDVOSBs. (These interviews occurred during June 6, 2007 through August 27, 2007).
- June 7, 2007—Letter from Secretary of Defense Robert Gates to Senator John Kerry, establishing a high priority within the Department for implementing the SDVOSB program and enumerating initiatives to reach the statutory goal.
- June 23, 2007—The third year of the DoD Strategic Plan for SDVOSBs is amended to emphasize the use of data bases for increasing contracts and subcontracts to SDVOSBs.

- June 26, 2007—The Honorable Dr. James Finley, the Deputy Under Secretary of Defense (DUSD) for Acquisition and Technology (A&T), provides keynote address at the third Annual Veterans Business Conference on third Year of DoD's Strategic Plan before an audience of 1,200. Later that day during the same event the Director, OSBP, participated in a Federal acquisition panel to discuss various DoD initiatives for SDVOSBs.

- August 7, 2007—The Director, OSBP met with officials from Walter Reed Hospital, the Director of Small Business Programs at the Army Medical Command, and the Deputy Director of TRICARE, to develop a strategy and an implementation plan to increase awards to SDVOSBs at military medical facilities.

- August 7, 2007—The DUSD A&T met with the Director, OSBP and Small Business Director for United States Transportation Command and representatives from various Veteran Service Organizations (VSOs) to develop transportation initiative for SDVOSBs.

August 9, 2007—The Director, OSBP, is a guest speaker at the third annual GSA Service Disabled Veteran-owned Small Business Conference, in New Orleans. The focus of his presentation was the DoD Strategic Plan and other SDVOSB initiatives with the Department.

- August 10, 2007—The Director, OSBP, is among several participants in GSA's SDVOSB Roundtable in New Orleans. The purpose of the round table was to discuss opportunities for SDVOSBs in the Gulf Coast area. Other participants were representatives of the Army Corps of Engineers (Hurricane Prevention Office), the GSA, VSOs, prime contractors and local chambers of commerce.

- August 20, 2007—The DUSD, A&T, and the Director, OSBP, present the inaugural Golden Talon awards for fiscal year 2006. The DUSD, A&T, closed the ceremony by calling for Golden Talon nominees for next year. (The Golden Talon Award is presented to DoD acquisition professionals in recognition of their outstanding contributions to the Department's SDVOSB program.)

- August 21, 2007—The DUSD, A&T, met with senior DoD leadership and Directors of Small Business Programs for the Military Departments to impress upon these leaders the importance of achieving the 3 percent goal and to develop strategies and initiatives for increasing awards to SDVOSBs.

- August 27, 2007—The Director, OSBP, is a guest speaker at the American Legion National Convention. His speech focused on DoD's Strategic Plan and initiatives.

- September 13, 2007—The Director, OSBP, met with officials from DoD Installations and Environment (the DoD organization responsible for executing the Base Re-alignment and Closures (BRAC)), Navy and Air Force senior procurement officials to develop initiatives for SDVOSBs for the BRAC schedule.

- UPCOMING EVENT: November 5, 2007—The DoD OSBP will host the inaugural SDVOSB Achievement Awards at the beginning of Veterans Day Week, honoring outstanding achievements by DoD employees in the SDVOSB program and outstanding DoD SDVOSBs contractors. The ceremony will take place at the Pentagon.

As evidenced by the above policy statements and initiatives, senior Departmental leadership and the entire DoD acquisition workforce are working aggressively to achieve the 3 percent goal. However at present the Department cannot provide a timeframe for achieving the SDVOSP goal.

*Question 2.* You disagreed with the figure that 87 percent of bundled contracts at DoD are not reviewed? What is the correct figure? Please outline specifically what DoD is doing to reduce bundling of requirements and give specific examples.

Answer. The 87 percent pertained to the finding made by the Small Business Administration (SBA) Inspector General regarding the fact that the SBA did not have enough Procurement Center Representatives to review bundled contracts and that according to SBA IG's survey, the SBA had not reviewed 87 percent of bundled contracts. This was not a statement concerning contract reviews within the Department of Defense.

Defense Federal Acquisition Regulation Supplement 219.201 requires that all acquisitions over \$10,000, except those under \$100,000 that are totally set-aside for small business concerns, be reviewed by a small business specialist. Bundling is one element of this review. All of those contracts that fit this category under DoD purview were reviewed.

The Department has focused its efforts in four areas: (1) data accuracy; (2) increasing awareness training for the acquisition workforce on the concepts of consolidation and bundling; (3) developing more tools to assist the acquisition workforce, as well as small business; and (4) taking small business participation into account in strategic sourcing decisions. I will discuss our progress as we are attempting to address each of these areas.

**Data accuracy:** DoD has dedicated a significant number of resources to ensure the successful transition into the Federal Procurement Data System—Next Generation (FPDS-NG). Additionally, the DoD Office of Small Business Programs is currently developing a “Data Monitoring and Analysis Plan.” The intent of the Plan is to ensure small business data is reviewed for anomalies and to perform analysis of the data. As a result of this latter initiative, OSBP recently discovered 2,066 actions in fiscal year 2007 that were coded as bundled by one DoD component. Further investigation revealed that all 2,066 of these actions had been miscoded as a result of issues related to migration of data into the FPDS-NG.

**Training:** The Department requires analyses of alternatives, including methods for mitigating the impact on small business, even if the bundling or consolidation can be justified by its anticipated benefits. During the past year, DoD has provided training to acquisition professionals in our efforts to facilitate the successful use of small business joint ventures, partnerships, and teaming. In addition, the DoD Office of Small Business Programs is currently developing an online Guidebook and a formal workshop that will identify Federal and commercial best practices and real world examples.

**Tools:** The Department is working to provide tools that will assist the acquisition workforce, further ensuring that requirements are not improperly consolidated or bundled. One such tool is the Benefit Analysis Guidebook that the DoD Office of Small Business Programs (OSBP) developed and posted online in 2002 to assist DoD acquisition personnel with the justification and analysis requirements necessary prior to bundling or consolidating. We are in the final stages of revising this Guidebook and will post it online soon. Additionally, OSBP is developing a Teaming/Joint Venture Guidebook as well as training to assist small businesses in pursuing larger procurements. This Guidebook and training will be available by the end of the year. Finally, OSBP collaborated with the Defense Acquisition University this past year to establish a small business community of practice (COP) Website. The COP provides invaluable small business information and resources to the DoD acquisition community.

**Small business in strategic sourcing considerations:** In May of 2005 the Office of Management and Budget directed agency heads to identify no fewer than three commodities that could be purchased more effectively and efficiently through the application of strategic sourcing. The Department is working to ensure that strategic sourcing does not result in bundling; however, it can many times result in consolidation. Each strategic sourcing action includes a small business advocate and seeks to increase, rather than decrease, achievement of socioeconomic goals.

*Question 3. How specifically does DoD monitor and enforce subcontracting plans?*

**Answer.** It is the post-award responsibility of Department of Defense contracting officers and small business specialists to ensure prime contractors’ make a good faith effort to comply with their subcontracting plan. Military Departments and Other Defense Agencies may delegate contract administration, including monitoring and oversight of the prime contractor’s entire small business program to the Defense Contract Management Agency (DCMA). DCMA conducts small business program compliance reviews to assess the effectiveness of the prime contractor’s overall small business subcontracting program, and when delegated, will monitor individual subcontracting plans.

The monitoring of an individual subcontracting plan is usually performed by the cognizant DCMA Administrative Contracting Officer (ACO). The ACO evaluates and monitors subcontracting plans in accordance with Federal Acquisition Regulation (FAR) 19.706. If warranted, section 8(d) of the Small Business Act as implemented in FAR 19.705–7 provides for liquidated damages to be paid by a prime contractor when the prime contractor fails to make a good faith effort to comply with the requirements of the small business subcontracting plan.

## Small Federal Vendors in FY 2005

At least 6 of the top 30 small vendors are large companies

RANK	PARENT COMPANY	FISCAL 2005 REVENUE (IN THOUSANDS)
<b>2</b>	<b>Science Applications International Corp.</b>	<b>\$360,556</b>
<b>11</b>	<b>General Dynamics</b>	<b>\$232,697</b>
<b>18</b>	<b>Lockheed Martin</b>	<b>\$175,311</b>
<b>20</b>	<b>L-3 Communications</b>	<b>\$147,229</b>
<b>22</b>	<b>BAE Systems</b>	<b>\$140,475</b>
<b>27</b>	<b>Northrop Grumman</b>	<b>\$133,372</b>

Data is from *Eagle Eye Publishers*



Broaden Your Vision. Sharpen Your Focus

## Complete List of Excluded Items, FY 2005

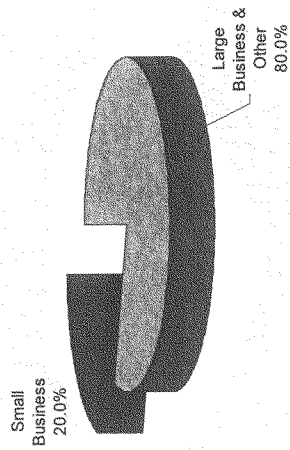
1. **Javits-Wagner-O'Day Program** (JWOD, Sheltered Workshop): Awards/IDVs with the CCR based Sheltered Workshop Flag equal to "Y" are excluded.
2. **UNICOR**: UNICOR or Federal Prison Industries are determined when the award/IDV has a UNICOR designation for the contractor. The exclusion is done by excluding all vendors whose name contains the pattern "FEDERAL PRISON" or "UNICOR" within it.
3. **American Institute in Taiwan**: Awards/IDVs with the American Institute in Taiwan designated as the contractor for the award and determined by a DUNS number of "161174503."
4. **Contracts awarded and performed outside of the United States**: Awards contracted and performed outside of the US are designated when the country in the place of performance is NOT the United States.
5. **Acquisitions by agencies on behalf of foreign governments** or entities or international organizations: Awards in which the contract for foreign entity is yes are excluded from the report.
6. **Product or Service codes for Lease Information - PSC X111 to PSC X300**.
7. **Product or Service code for Utilities - PSC S112**.
8. **Contracts by Tricare DODAAC - H94002**.
9. **Contracts funded predominately with agency generated sources**. Accordingly, the following Federal government agencies are excluded:
  - FDIC, 5100
  - Postal Service, 1800
  - Bureau Of Engraving And Printing, 2041
  - United States Mint, 2044
  - Office Of The Comptroller Of The Currency, 2046
  - -Office Of Thrift Supervision, 2047
  - Transportation Security Administration, 6965; 7013
  - Federal Aviation Administration, 6920
- Tennessee Valley Authority, 6400
- Administrative Office of the US Courts, 1027
- Architect of the Capitol, 0100
- Bankruptcy Courts, 1021
- Central Intelligence Agency, 5600
- Congressional Budget Office, 0800
- Court Services and Offender Supervision Agency, 9594
- Pretrial Services Agency, 959P
- Federal Judicial Center, 1028
- Overseas Private Investment Corporation, 7100
- Supreme Court of US, 1001
- US Courts of Appeals-Judicial Circuits, 1002
- US District and Territorial Courts, 1012
10. **Contracts awarded for DeCA** are excluded because they are buying for a commissary, resale.
11. **Awards/IDVs with a Reason Not Competed value of "RES"** for Resale.





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## Total Government and Small Business Procurement Without Exclusions



Category	Total FY 2006	Share
Large Business & Other	\$329,690,334,975	80.0%
Small Business	\$82,455,507,306	20.0%
Total	\$412,145,842,281	

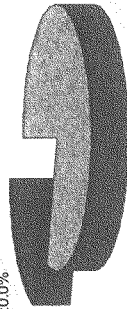


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## Exclusions Spending Summary, FY 2006

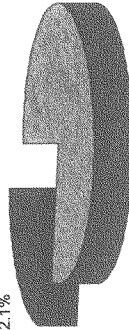
Before Exclusions: SB Spending = \$82.5 billion

Small Business  
20.0%



After Exclusions: SB Spending = \$75.9 billion

Small Business  
22.1%



Large Business & Other  
77.9%

	Total	Large Business & Other	Small Business	SB Share of Total
Total Procurement, FY06	\$412,145,842,281	\$329,690,334,975	\$82,455,507,306	20.0%
Overall Totals After Exclusions	\$343,370,916,961	\$267,638,798,353	\$75,893,889,951	22.1%
Total, Exclusions	\$68,774,925,320	\$62,051,536,622	\$6,561,617,355	9.5%

## **COMMENTS FOR THE RECORD**



*U.S. Women's Chamber  
of Commerce*

Comments  
from  
Margot Dorfman, CEO  
U.S. Women's Chamber of Commerce

U.S. Senate Committee on Small Business and Entrepreneurship  
Hearing on "Increasing Government Accountability and  
Ensuring Fairness in Small Business Contracting"  
July 18, 2007

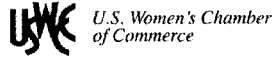
Chairman Kerry, Ranking Member Snowe, and members of the Senate Committee on Small Business and Entrepreneurship. The U.S. Women's Chamber of Commerce, representing over 500,000 women in business across the U.S., is strongly supportive of efforts to increase government accountability and ensuring fairness in small business contracting. Your oversight provides the backbone of fairness to a system that can be greatly influenced by the power and political clout of a few large businesses.

Between 2005 and 2006 the value of competitively bid contracts actually declined by 12 percent while the value of non competitive contracts exploded by 42 percent. As a result, non-competitive contracts now make up more than half of all contracts.

Additionally, within the small business sector, the government continues to fail to meet standards for contracting with small businesses and with targeted goaling sectors. As the influence of large business on government contracting grows, the size of the acquisition workforce diminishes, the knowledge drain begins with baby boomers leaving the government workforce, contracting consolidating and bundling grows, and now non-competitive contracts rise, we fear that more and more efforts will be placed on achieving small business goals through the use of the smallest number of businesses possible.

Therefore, the U.S. Women's Chamber of Commerce recommends the following:

1. **Impose strict rules and procedures to limit no-bid contracts and methods of establishing indefinite delivery/indefinite quantity contracts.** Well-meaning attempts to service the Iraq war effort and decrease the cost associated with government acquisition have reduced competition, driven up costs, and created more and more opportunities for fraud.
2. **Increased transparency.** With technology available today, transparency in contracting should be well within our reach. While non-profit organizations are doing all they can to use government data to achieve transparency, the government resists.
3. **Increased metrics.** More metrics should be in place. Current reporting by the SBA and through the federal data systems include total spend and number of



actions with small businesses, and spend/actions with special targeted programs (8(a), Service Disabled Veterans, Women-Owned, etc.). But we are not measuring the total number of businesses involved, businesses that are being counted twice in various socio-economic areas, and the number of new suppliers in the contracting system. This data would provide a much more insightful look into the competitiveness and openness of government contracting.

4. **Increased vendor diversity policies.** There are a number of ways to increase the openness of government contracting to businesses from diverse regions and socio-economic sectors. Most notably is removing the multiple counting of socio-economic sectors for goaling purposes. In today's contracting environment, an 8(a), Service Disabled Veteran, HUBZone small business counts towards goaling objectives in each sector. Consequently, less diversity is achieved and a false method for competitiveness is employed.
5. **Increase the actionability of regulations when enabling new contracting programs.** It has been very difficult for the contracting community to implement recent small business programs. Notably the Service Disabled Veteran Small Business program was wrought with inaction by the contracting community due to unclear regulations. Rather than make mistakes, many acquisition professionals chose to not act at all. We recommend your committee closely watch how regulations are written and engage the acquisition community more closely to assure that legislation is turned into good actionable systems.
6. **Increase the small business goals.** We strongly suggest that the goals for small business contracting and for certain socio-economic groups be raised to better reflect the number and capacity of these businesses. Too often, these goals are seen as ceilings rather than floors. By raising expectations, we will see increased activities to meet goals.
7. **Hold large businesses accountable for sub-contracting and teaming claims used to secure contracts.** Too often, our current contracting system allows large businesses to manipulate the system by making claims regarding the intended use of small businesses through sub-contracting and teaming arrangements. These loop holes should be plugged and greater transparency achieved.
8. **Impose stricture rules around contracting bundling and consolidation.**
9. **Impose much stronger consequences for large businesses that take advantage of small business programs inappropriately representing themselves as a small business.**



Comments  
from  
Cris Young, President  
National Procurement Council

U.S. Senate Committee on Small Business and Entrepreneurship  
Hearing on “Increasing Government Accountability and  
Ensuring Fairness in Small Business Contracting”  
July 18, 2007

Chairman Kerry, Ranking Member Snowe, and members of the Senate Committee on Small Business and Entrepreneurship. The National Procurement Council, representing over 200,000 small businesses across the U.S., including 8a, Women-Owned, HubZone and Service Disabled Veteran, is strongly supportive of efforts to increase government accountability and ensuring fairness in small business contracting. Your oversight provides the backbone of fairness to a system that can be greatly influenced by the power and political clout of a few large businesses.

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